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Feb 10 2023 08:39 AM
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

**THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF
CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES,
LLC**

Respondents.

Appeal from the Eighth Judicial District Court for Clark County
District Court Case No. A-16-735550-C
(Honorable Mark Gibbons)

Nevada Bar No.: 5041
CAP & KUDLER
3202 West Charleston Blvd.
Las Vegas, NV 89102
(702) 878-8778
Counsel for Appellants
Jeffrey A. Myers and Andrew James

APPELLANTS' APPENDIX
VOLUME 4
CHRONOLOGICAL ORDER

Document	Index Number	Bates Number
Amended Complaint [Filed 05/06/2016]	1	AA000001 - AA000007
Plaintiffs' Third Motion to Compel Discovery Responses [Filed 02/24/2020]	1	AA000008 - AA000030
Notice of Entry of Order re: Plaintiffs' Third Motion to Compel Discovery Responses [Filed 08/13/2020]	1	AA000031 - AA000037
Jury Instruction No. 21 4.2 Elements of Negligence Claim [05/31/2022 Jury Trial - Day 1]	1	AA000038
Jury Instruction No. 27 8.1 Premises Liability: Essential Factual Elements [05/31/2022 Jury Trial - Day 1]	1	AA000039
Jury Instruction No. 28 8.20 Landowner Liability: Owner Duty to Inspect [05/31/2022 Jury Trial - Day 1]	1	AA000040
Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1]	1	AA000041

1	Recorder's Transcript of Jury Trial	2	AA000042 -
2	Day 1, Tuesday, 05/31/2022 <i>Pages 1 - 199</i>		AA000240
3	[Filed 08/08/2022]		
4	Recorder's Transcript of Jury Trial	3	AA000241 -
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6	[Filed 08/08/2022]		
7	Recorder's Partial Transcript of Jury	4	AA000299 -
8	Trial - Day 2, Wednesday, 06/01/2022		AA000393
9	[Filed 08/08/2022]		
10	Recorder's Partial Transcript of Jury	4	AA000394 -
11	Trial - Day 2, Wednesday, 06/01/2022:		AA000463
12	Testimony of Donald Gifford		
13	[Filed 07/07/2022]		
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15	Trial - Day 3, Thursday, 06/02/2022		AA000559
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19	Testimony of Jeffrey Myers and Andrew James		
20	[Filed 07/07/2022]		
21	Recorder's Partial Transcript of Jury	7	AA000716 -
22	Trial - Day 4, Friday, 06/03/2022		AA000809
23	[Filed 08/08/2022]		
24	Recorder's Partial Transcript of Jury	7	AA000810 -
25	Trial - Day 4, Friday, 06/03/2022:		AA000854
26	Testimony of Leroy Comstock		
27	[Filed 07/07/2022]		

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2	Trial - Day 5, Monday, 06/06/2022		AA000935
3	[Filed 08/08/2022]		
4	Recorder's Partial Transcript of Jury	8	AA000936 -
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APPELLANTS' APPENDIX
VOLUME 4

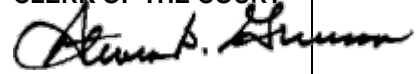
ALPHABETICAL ORDER

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Amended Errata to Motion for New Trial [Filed: 7/20/2022]	8	AA000960 - AA000961
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1	Notice of Appeal	8	AA001011 -
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3	Notice of Entry of Order re: Plaintiffs' Third	1	AA000031 -
4	Motion to Compel Discovery Responses		AA000037
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6	Notice of Order Denying Plaintiffs' Motion for	8	AA000997 -
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14	Plaintiffs' Reply to Defendants' Opposition to	8	AA000977 -
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17	Plaintiffs' Third Motion to Compel Discovery	1	AA000008 -
18	Responses		AA000030
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JEFFREY MYERS, ET AL.,
8 Plaintiffs,

) CASE#: A-16-735550-C
)
) DEPT. XVII
)

9 vs.

10 THI OF NEVADA AT CHEYENNE,
11 LLC, ET AL.,
12 Defendants.

13
14 BEFORE THE HONORABLE DAVID BARKER
15 DISTRICT COURT JUDGE
16 WEDNESDAY, JUNE 1, 2022

17 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 2**

18 APPEARANCES

19 For the Plaintiffs:

DONALD C. KUDLER, ESQ.

20 For the Defendants:

ALEXANDER F. GIOVANNIELLO, ESQ.
CHRISTOPHER J. GIOVANNIELLO, ESQ.

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25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

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None

1 Las Vegas, Nevada, Wednesday, June 1, 2022

2

3 [Case called at 10:34 a.m.]

4 THE COURT: Marshal, whenever you're ready.

5 THE MARSHAL: Okay. Can I get a quick bathroom briefly?

6 THE COURT: Yes. Absolutely.

7 [Recess taken from 10:34 a.m. to 10:38 a.m.]

8 [Jury in at 10:38 a.m.]

9 THE MARSHAL: Please be seated.

10 THE COURT: We're on the record in A-735550, Myers v. THI

11 of Nevada at Cheyenne. Record should reflect presence of

12 representatives for Plaintiff and Defense. All members of the jury panel

13 do appear to be present.

14 Parties stipulate to the presence of the entire panel?

15 Plaintiff?

16 MR. KUDLER: Plaintiffs does, yes, Your Honor.

17 THE COURT: Defense?

18 MR. A. GIOVANNIELLO: Yes, Your Honor.

19 THE COURT: Thank you. I hate to start the first day off

20 apologizing, but I was right up until the 10:00 all the plans were working

21 for me until they added five new cases on my calendar this morning that

22 pushed me past the 10:00. It has nothing to do with the parties here, it's

23 all on me and how I have to do what I do in the morning. So I apologize

24 for that delay. I will work every -- I will work diligently to respect your

25 time.

1 Record should reflect having selected this jury; we're moving
2 to the opening statements phase of the trial. Plaintiff having the burden
3 of proof in the action they get to go first.

4 Counsel, you have the floor, opening statement.

5 PLAINTIFFS' OPENING STATEMENT

6 MR. KUDLER: Thank you, Your Honor.

7 Good morning, ladies and gentlemen. As I told -- excuse me.
8 There we go, okay. That'll be a little better. As I told you yesterday my
9 name is Don Kudler, I represent Jeffrey Myers and Andrew James in
10 regards to this incident that happened way back in 2014.

11 On June 6th of 2014, Mr. James and Mr. Myers appeared at
12 the Defendants' facility, College Park Rehab Center to do a quick and
13 easy job, change out a breaker. Something that they'll tell you, we've
14 done this hundreds of times. This is something in our 30 and 40 years of
15 experience that we have done, and we have done with the power on
16 because in some cases the power needs to be on because there are
17 other things, you know, like in this case items that the patients needed in
18 order to get the proper patient care. That needed -- the power needed to
19 remain on.

20 So they'll tell we got there, we checked it out, we went into
21 the room, we had a key that was left for us. We went into the locked
22 room. We started to open the panel and Jeff was undoing the screws
23 handing them to Andrew who was putting them on the back wall, there's
24 a little shelf. So they were collecting the screws that they were removing
25 in a safe place so they could be accounted for and not be around the

1 electrical equipment.

2 They did this process. As they did this process everything
3 was going along fine until they went to remove one screw. And as they
4 -- as Jeff was working on this screw, another screw that was left on a
5 shelf above before they were there fell and went all the way through past
6 where Jeff was working around this level and struck, it crossed two
7 fingers. The fingers are where the electricity comes out of. When that
8 metal screw crossed those two fingers it should have caused the breaker
9 to break and the electricity to be shut off and that would have been the
10 end of it. It didn't do that. Instead it's called an arc flash. So this kept
11 building and building and building up energy until this ball of fire
12 exploded into them.

13 Jeff was -- excuse me. Andrew was behind, he went to
14 shield himself and burned his elbow. What you won't find is any burns
15 where the gloves were because they were wearing their protective
16 equipment. Jeff was wearing glasses; he was in front. He has burns
17 under his arm, but nothing in his hand because that was protected by
18 protective equipment.

19 You'll also hear that they're qualified. Andrew is licensed as
20 a master electrician in Nevada. Jeff is licensed as a journeyman
21 electrician in Nevada as well as he has been licensed as a master
22 electrician in the State of California. These gentlemen are well qualified
23 to be doing this job.

24 That's the event. That is what caused the issue from being a
25 simple change, given which the order was -- or the bill was \$345 or \$348,

1 something like that just for the labor because the Defendants supplied
2 the part. The part itself you'll hear is over a thousand dollars. They
3 weren't taking a loss on this; they were getting paid for labor, client
4 supplied the part.

5 The only way -- and they'll tell you the only way to know the
6 right part to do -- to use for that is to open it up and look at the numbers
7 inside behind the panel. There's a front panel that you take off, there's
8 an inside panel, that has to come off after removing some retaining
9 pieces and then you see what the part number is. The Defendants got
10 that part number. They supplied that part number for my clients.

11 So that screw goes down, it explodes. That night they go
12 into the facility. Eventually they're able to -- somebody makes a call, I
13 believe it was a third man that was with him at the time makes a call to
14 911, AMR or Mercy West -- or MedicWest, I'm sorry, as it may be called,
15 they arrived to the scene. And you're going to hear from Luke Crawford
16 who was one of the gentlemen who treated them in the ambulance. He
17 checks them out, gets them set, does his job, they transport them both to
18 UMC.

19 At UMC Andrew's burns do not appear to be bad. He had a
20 burn on his left arm, he had some burning in the face, in the cheek and
21 neck area. And he goes to the hospital that night and then is released.

22 Now the reason they were working at night was they were
23 replacing a kitchen breaker and during the day they don't want to shut
24 down the kitchen, so they went in at night. Didn't -- because they were
25 removing the breaker so it would completely shut down the kitchen, so

1 they were asked to do it at night. They were also asked to do this with
2 the power on. You're going to see a document that is signed by a
3 gentlemen by the name of Darrin Cook who was one of the bosses over
4 at College Park, he said do this with the power on. And they did, and
5 they did it because they needed the power on in order to keep that
6 facility running.

7 Andrew was released. Jeff is in the hospital in the burn ward
8 for nine days until the 15th. So from June 6th to June 15th he's in the
9 burn ward being taken care of, they're checking the wound and they're
10 doing everything they have to do. You'll be hearing from Dr. Richter and
11 Dr. Ozobia in regards to the care at the hospital. Jeff then had some
12 follow up appointments to deal with the wound care. So he had, you
13 know, a continuing open wound that they had to make sure healed, and
14 they fixed him up. He ends up with his treatment, his last treatment in
15 October of 2014. During that period of time he didn't work. And Jeff will
16 tell you, at that time I was working full time, I was working 40 hours a
17 week, I was getting paid \$40 an hour and I missed three months basically
18 of work -- excuse me, four months of work. And that's the information
19 you're going to hear.

20 Jeff will also talk about how he -- we have some pictures
21 regarding the scarring. Because Jeff is a little tanner today then he is at
22 certain parts of the year, the scars don't show up on his face as much,
23 but during the rest of the year when he has less of a tan there's more of
24 visual -- visible scarring. He also has the loss of sensation in his left arm
25 where the scarring was, where the burns were. So while Jeff was

1 working he'll tell you, there are times that I'm working, I may be up on a
2 ladder or I may be, you know, doing my job or at home, whenever, and
3 it's kind of a sensation, but I don't know what it is. It could be just
4 somebody touching me, it could be something scratching me, or it could
5 be something seriously cutting me. And so he reacts to that regardless
6 of what it is, and it bothers him. It's, you know, scary that all of a sudden
7 you don't know, am I being cut, what is happening to me. And he'll
8 discuss that in his testimony.

9 Now Andrew's treatment is a bit longer, Andrew is still
10 actually treating. And we're going to kind of go through it real quickly,
11 but Andrew following the accident he has what's called an epicondyle
12 injury, so around the elbow here in the epicondyle area he has lost
13 sensation and feeling. He had lost his grip strength in his left hand
14 because of this. So he's no longer able to work in the field as an
15 electrician to what he feels is safe. So he'll talk about that.

16 And I just real quickly go into where we are in this company.
17 Years ago Andrew and his father-in-law, and you're going to be hearing
18 from his father-in-law, Douglas Smith, got together and they said --
19 basically Douglas said, what do you want to do? You know, and Andrew
20 said, I'd like to have an electrical company. And the father-in-law said,
21 yeah. I could help you with that. And he helped and the company
22 formed, and it formed in through the father-in-law's name, in Douglas's
23 name because this is a construction type company and they're required
24 to have bonds and they're required to have financial backing. Andrew's
25 a young man, he didn't have that. His father-in-law helped him with that.

1 So although his father-in-law's name is on the company Andrew runs the
2 company, he takes care of everything. It was better when he was able to
3 work in the field because they could do more work, he could run the
4 company and be in the field. But now he can't be in the field anymore
5 and certainly not to the level he was at the time this accident happened.

6 And Andrew, we'll talk about it, you'll see documents
7 regarding his wage loss that he's had over the years because he has had
8 to basically take a pay cut, working from being a master electrician to
9 running a business and not getting that hourly rate as well.

10 So Andrew shortly sometime after the accident he's having
11 this pain in his arm and his elbow and problems and he goes to a doctor
12 by the name of Robert Patti. Robert Patti does an exam called an
13 independent medical exam. He just takes a look at him. He's not at this
14 point treating him and he says, you have a problem, you have an injury
15 to your epicondyle region and we're looking at a possible surgery in the
16 future. He then picks up Andrew as a patient and starts treating him.
17 And he does recommend surgery in the long run. He says he really
18 could benefit from surgery. Andrew though is like, yeah. A friend of
19 mine had anesthesia and he told me it was really, really bad, post
20 anesthesia. I don't feel safe getting that. I don't feel safe being put
21 under. So he doesn't go -- undergo the surgery with Dr. Perry, excuse
22 me, Dr. Patti.

23 He continues to treat, he treats with -- excuse me, yeah. He
24 treats with Dr. Craig. Dr. Craig is not going to be here, Dr. Craig passed
25 away last year of COVID. A woman by the name of Sheryl Cipollini

1 who's a nurse practitioner did most of the care for Andrew. There will be
2 a letter that you should see that she actually authored for the doctor
3 because she can't diagnose, she can't make these opinions. And she'll
4 get up here and tell you, yeah. We noticed these problems. We also
5 noticed that he seemed to be suffering from an undiagnosed post-
6 traumatic stress disorder, PTSD.

7 So he starts looking at that and he ends up treating him with
8 a woman by the name of -- excuse me, a woman by the name -- just lost
9 my train. Lindsey Combs, thank you. Lindsey Combs, he starts treating
10 with Ms. Combs. Ms. Combs will be here today to testify that Andrew
11 went through testing and confirmed that he is suffering from PTSD as a
12 result of this incident. And she'll also talk about -- and we're trying to get
13 ahold of Sam Zend, a physiatrist. We're having trouble, hopefully he'll
14 be here to testify as well in regards to that. I can't guarantee it, but he'll
15 also testify that, yes. Andrew has PTSD as a result of this incident.

16 Now Lindsey will go through -- Ms. Coombs will go through
17 here are eight factors, eight things that we look at and how Mr. James
18 fits all eight of these categories. There has to be a traumatic event, yes.
19 There's a traumatic event. He has to be suffering from certain
20 psychological factors. But she'll go through, and she'll explain all those
21 to you.

22 He is also seeing another orthopedic doctor after Dr. Patti by
23 the name of Arthur Taylor. He saw Arthur Taylor once for the elbow, the
24 epicondyle issue. He did see him for a wrist injury that occurred
25 completely separate. We're not asking for compensation for something

1 that isn't related to this. But he had a wrist injury and I believe an ankle
2 injury that he was treated for, but we're only looking at the one. And
3 after seeing him and talking to him Dr. Taylor agreed with Dr. Patti's
4 opinion separately, completely separate. And he agreed that, yeah.
5 Andrew would benefit from a surgery.

6 So that's where we are. We're going to have some doctors
7 come in, two from the emergency room. In regards to Jeff's case we've
8 been trying to get ahold of -- he went to Valley Hospital. He'll tell you he
9 had abscesses, some puss forming from one of the burns under his arm
10 and he went to Valley Hospital twice. We're trying to get those two
11 doctors that saw him in the emergency room to come in and just testify
12 very briefly that this is what happened, this is the injury, this is, you
13 know, what we see. And then we'll be done telling you guys what
14 happened.

15 And so that's what we'll be talking about is the incident, the
16 injury and then in both cases how this affected their lives. Andrew
17 suffering from PTSD until today. And Ms. Coombs will also talk about,
18 you know, when you have something like PTSD you have a bucket, you
19 know, a bucket of things you can handle. And when you have PTSD like
20 Andrew does that bucket is full.

21 So we're going to talk about some things in Andrew's life.
22 His wife is battling cancer. He has to deal with that, caring for his wife --

23 MR. A. GIOVANNIELLO: Objection. Irrelevant.

24 THE COURT: Overruled.

25 MR. KUDLER: He has to deal with caring for his wife.

1 Dealing with life and things like that, financial issues when his bucket is
2 full. And when your bucket is full dealing with PTSD everything else you
3 have to cope with is harder, is more stressful and compound with those
4 preexisting PTSD effects.

5 Thank you.

6 THE COURT: Counsel, you have the floor. Opening
7 statement, Defense?

8 DFEFENDANTS' OPENING STATEMENT

9 MR. A. GIOVANNIELLO: Good morning, ladies and
10 gentlemen. Normally I would be standing over here, you know, walking
11 around. So you kind of got to forgive me, I've got to hang out over here.
12 One of the reasons being is if I'm walking carpet I have a tendency to trip
13 with my left foot and I don't want to fall flat on my face in front of you all.
14 It just wouldn't be good. So I'm going to stand behind the podium and I
15 hope you forgive me for that.

16 As I told you in voir dire, my name is Alex Giovanniello and
17 I'm being helped here by Christopher Giovanniello, also a lawyer. And
18 obviously his name is the same, he's also my son. I also want to
19 introduce to Eva Gonzales (phonetic). She is my client representative
20 here today. She'll be with me; you'll be seeing her quite often.

21 As you know I represent the Defendants in this case. College
22 Park is a skilled nursing facility, okay. It's located in North Las Vegas. It
23 offers 24-hour skilled nursing care the patients need, okay. It consists of
24 98 beds, and it employs about 150 people, okay. Consisting of nurses,
25 certified nursing assistants, housekeeping, occupational therapists,

1 kitchen staff and a maintenance, okay.

2 Now in 2014 the State of Nevada came in and inspected
3 College Park and like many other buildings at that time it determined that
4 College Park needed an upgrade on its electrical system, okay. Now
5 College Park houses many very ill patients that require like I said 24-hour
6 care, so an electrical upgrade is not a simple task, okay. It required three
7 separate parts. It required life safety, clinical and regular, okay. In 2014
8 all of these systems were in one spot and if that spot failed then all of a
9 sudden life safety would be on the blink. Critical systems would be on
10 the blink. So the State said you can't have that. You got to separate
11 these into different areas, okay.

12 So -- now -- you know, obviously electricity is -- it doesn't
13 take an expert to say that electricity is dangerous, it's something we all
14 know, okay. So all of these panels, the electrical panels especially the
15 big ones they're located in the back of the nursing home. And they're in
16 a special room, it's a locked door. You cannot get in it anywhere but
17 from the outside. So that's -- they keep that over there, okay.

18 You're probably going to see some photographs of that just
19 so you can get a little bit of perspective on what it is. And you're
20 possibly going to see a video of, you know, going inside that because
21 basically sometimes what we do is site inspects, we bring the jury over
22 there. But it's dangerous you guys could -- the jury cannot -- I'm sorry
23 about saying you guys, but it's my New York in me. You can't -- we can't
24 take you over there because it's dangerous. You can't walk around
25 where all these electrical panels are, so we're going to show you pictures

1 and possibly a video of it.

2 Now obviously this is going to require specialized care --
3 excuse me. It's going to require specialists to go in and do the electrical
4 upgrade here. So College Park looked for vendors, okay. And one of the
5 vendors was SCI Construction. SCI Construction is a general contractor,
6 they're not a defendant in this case, okay. They're just -- they were just a
7 contractor. Now what SCI did was they retained Industrial Light and
8 Power as a subcontractor to perform the work that -- to bring it up to
9 code, okay.

10 Now as you heard the Plaintiffs' here, Jeffrey Myers and
11 Andrew James they were employed by Industrial Light and Power, okay.
12 Both of the plaintiffs were qualified electricians. As a matter of fact you
13 heard Mr. James is considered a master electrician, okay. And Mr.
14 Myers is a journeyman electrician. And they've been doing this a long
15 time. And they've worked on these panels many, many times. You've
16 actually heard that, you're going to hear testimony from them that
17 they've done that, okay. And of course, being that they've worked on
18 panels and worked on energized panels they're aware of safety rules and
19 regulations that they need to follow. And matter of fact, they're the only
20 people -- people like them I would say with their qualifications are the
21 only ones that can work on the panels and create this separation of
22 systems, okay.

23 Now as you heard from Mr. Kudler this is still a nursing
24 facility, there are ill people in there, there's machines in there running.
25 Some people -- there's ventilators, people are on ventilators, people are

1 on all the kinds of machines that require electricity. So you cannot
2 completely turn the electricity off, okay, in that facility. So as such the
3 Plaintiffs were tasked to work on a live energized panel, okay. And now
4 obviously that's dangerous work, that's why you have specialists doing
5 it.

6 Now in fact there was a work permit that was created by
7 Industrial Light and Power saying we can work on an energized panel,
8 okay. Now within that work permit you're going to see that there is an
9 area basically saying that -- to make sure the area was clear and safe,
10 okay. To make sure you're wearing proper safety equipment. And
11 you're going to see at the top of that form there's something called arc
12 flashes, okay. So obviously if you're working on a live panel they have
13 to be aware that there could be an arc flash, and it's even on the permit.

14 Now the evidence in this case is going to show that the
15 Plaintiffs were working on a -- the main energized panel and they were
16 going to install circuit breakers. It's three circuit breakers they were
17 going to install. And in the room was Mr. Myers, and he was the main
18 guy actually doing the work. And Mr. James was behind him. And as --
19 now Mr. Kudler said I guess he was putting screws in a bucket or
20 handing him the tools.

21 So now because you're in a skilled nursing facility because
22 you got to, you know, keep the power on, you can't do that during the
23 day, but at night, people sleeping, you don't need as much power. You
24 don't need as much power in the kitchen. So they went on the job, they
25 got there about 9:00 and they started working on the panels, okay.

1 Now as Mr. James was installing the circuits he was on the
2 third one, he was using an impact driver, all right, to put the screw in and
3 basically that's when the arc flash happened. You're going to see that
4 Mr. Myers; his face was burned. They're going to show you pictures of
5 this, okay. You're going to see that he had a burn on his arm, okay. And
6 you're also going to see that Mr. James had a burn on his elbow, okay.

7 Now what these photos are going to show you that, you
8 know, the face is burned, it's questionable whether they were wearing
9 PPE or the right PPE. Plaintiffs, you know, as you've heard -- I'm sorry, I
10 thought you said something.

11 THE COURT: No.

12 MR. A. GIOVANNIELLO: I thought I heard --

13 THE COURT: I was listening.

14 MR. A. GIOVANNIELLO: I thought I was getting yelled at
15 there for something.

16 Anyway getting to this, Plaintiffs' proffer that there was a
17 screw or bolt that fell and caused the arc flash, okay. However, you're
18 going to see evidence that afterwards, at least Plaintiff Mr. James in a
19 Workers' Compensation document called the C4 --

20 MR. KUDLER: Objection, Your Honor.

21 THE COURT: Approach.

22 [Sidebar begins at 11:03 a.m.]

23 MR. KUDLER: Is it [indiscernible] on what was coming in
24 under the Workman's Comp?

25 MR. A. GIOVANNIELLO: That's his -- it's his own -- excuse

1 me. It's his own exhibit and Dr. Patti reviewed it. And it's right in his
2 records.

3 THE COURT: All right. Overruled.

4 MR. KUDLER: Thank you, Your Honor.

5 [Sidebar ends at 11:03 a.m.]

6 THE COURT: Objection's overruled.

7 MR. A. GIOVANNIELLO: In this document it's going to say
8 how did the accident happen, and Mr. James wrote unknown, okay. So
9 a day or two afterwards it's unknown. Now a couple years later it's a
10 screw that fell and caused it.

11 Now the whole reason that the Plaintiffs, Industrial Light and
12 Power was there was to make the area safe and to implement the
13 upgrades required by the State of Nevada.

14 After the flash they called 911, okay. Now this was late at
15 night. By the time this happened according to the AMR -- I believe it was
16 AMR, I forgot -- or MidWest, they arrived at 23:00 something. 23:00 like
17 11, so that's like 11:00 at night, okay. They arrived then and they took
18 them to the hospital, they went University Medical Center, okay.

19 And yes, it's true. Mr. James -- excuse me. Mr. Myers
20 remained in the hospital from -- they have from the 7th to the 15th. And
21 the reason it's the 7th is because he was admitted after midnight even
22 though the incident occurred late at night on the 6th. So he stayed in the
23 hospital, okay. And he was released from the hospital. Afterwards he
24 did go to outpatient care, okay. And in time he was fully healed, in about
25 two months he was fully healed. No further problems that we saw in

1 any of the evidence that has been presented.

2 Mr. James however, he went to the hospital, and he had a
3 burn on his arm, and it was a second degree burn. That's what I want --
4 excuse me, I forgot to mention that. The diagnosis for Mr. Myers was
5 first and second degree burns on his face and on his arm and on his arm
6 pit I believe, okay.

7 Mr. James had a second degree burn, okay, on his arm, okay.
8 And he was treated at the hospital and released that night. He went
9 home. He did go to outpatient, the outpatient center for a couple -- I'm
10 not sure, I feel it was a couple months or a month, but he did go there,
11 and he did get treatment. He was getting Silvadene and some other
12 treatment on his arm, okay. And eventually that healed, okay.

13 Now Mr. James, you know, alleges through it that he had
14 continuing issues over here, okay. However, in the records that you're
15 going to be seeing here, the medical records there's no mention of third
16 degree burns, there's no mention of trauma to the head, there's no
17 mention of anxiety and there's no mention of any respiratory problems.
18 Really it's not until almost six, seven years later that he sees a
19 psychotherapist who says he has PTSD.

20 Now you're also going to hear from Roy Comstock in this
21 case. Mr. Comstock is the head of maintenance at College Park. He's not
22 an electrician, okay. You're going to hear him say -- you're going to hear
23 him testify that he never opened those panels at issue in this case and
24 he's never worked on them because he's not qualified to do so, okay.
25 He's also going to say that he did not provide the breakers, okay,

1 because he wouldn't know how to do it. He said that -- he's going to
2 testify that he's been there -- he was there for seven years before this
3 incident, so he started in 2007. During that time in his entire seven years
4 no one went in that panel.

5 You're also going to hear testimony from a Tommy LaFronz.
6 Mr. LaFronz was retained by College Park and to essentially spy on Mr.
7 James, okay. So what he did was he took a video of Mr. James and
8 we're going to show that video to you as well, okay. And essentially just
9 going to make from the video, it's really up to you to make whatever you
10 want from that video.

11 You're also going to see some other pictures of Mr. James
12 that were taken after the incident occurred. And some photographs of
13 that and, you know, essentially you just -- you'll make whatever you
14 want from that as well. That's up to you.

15 In the end it's really up to you to decide based upon the
16 evidence that is shown to you whether or not College Park breached a
17 duty to Plaintiffs in this case, okay. That means whether they were
18 negligent, okay. And from then we're going to go through, it's a special
19 verdict form and it's going to tell you how to, you know, do things, okay.

20 One of the things you're going to also be asked to do in the
21 evidence show whether or not the Plaintiffs were contributorily
22 negligent, meaning that they caused their own problem, okay. That their
23 injuries are a result of their actions.

24 And with that, ladies and gentlemen, you know I trust that
25 once you hear the evidence that you will decide in favor of College Park.

1 And I thank you very much for your time and I thank you for listening to
2 me. And a way we go.

3 THE COURT: All right. Ladies and gentlemen, that concludes
4 the opening statement phase of the trial. We're going to move
5 immediately into the evidence phase of the trial. Again, Plaintiff having
6 the burden they get to go first.

7 Counsel, call your first witness.

8 MR. KUDLER: Mr. Gifford is in the anteroom.

9 THE COURT: Perfect.

10 MR. KUDLER: And I guess that would be --

11 THE COURT: Our witness room --

12 MR. KUDLER: Oh that's what it's called? Okay.

13 THE COURT: Hang on. Do you need a break?

14 UNIDENTIFIED JUROR: No, no. It's just I'm having -- I'm
15 struggling to hear.

16 THE COURT: Okay. We can help that.

17 UNIDENTIFIED JUROR: I heard, but I'm struggling.

18 THE COURT: We're going to give you headphones.

19 UNIDENTIFIED JUROR: Thank you.

20 THE COURT: If anybody else has that -- I should have
21 mentioned that yesterday, but we were moving quickly. If you need
22 something -- do you need them too? We have two sets.

23 Marshal, we're getting a couple of headphones set up for the
24 jurors.

25 THE MARSHAL: I got one.

1 THE COURT: Oh, you already do?

2 THE MARSHAL: Yes, sir. Right this way, sir.

3 [Testimony of Don L. Gifford, transcribed under separate cover]

4 THE MARSHAL: Please remain standing, face the clerk, raise
5 your right hand to be sworn.

6 NATHAN OZOBIA, PLAINTIFFS' WITNESS, SWORN

7 THE CLERK: Please take a seat. Please state and spell your
8 first and last name for the record.

9 THE WITNESS: First name is Nathan, N-A-T-H-A-N. Last
10 name is Ozobia, O-Z-O-B as in boy, I-A.

11 THE COURT: Counsel, your witness.

12 MR. KUDLER: Thank you.

13 DIRECT EXAMINATION

14 BY MR. KUDLER:

15 Q Good afternoon, Doctor. Sorry, we're a little bit later than I
16 thought. If --

17 MR. KUDLER: May I approach, Your Honor, and give him
18 the --

19 THE COURT: Yes.

20 BY MR. KUDLER:

21 Q Before we get into the heart of the matter, Doctor, I wanted
22 to get into your background.

23 A Okay.

24 Q Let's start with your education, where did you go to medical
25 school?

1 A University of Lagos, Nigeria.

2 Q Okay. And when did you graduate?

3 A 1967.

4 Q Okay. And then after graduating did you start to practice?

5 A No. After I graduated we got into a war, the Nigerian-

6 Biafran Civil War and was caught behind the war lines and I spent three
7 years treating wounded soldiers.

8 Q Okay. While you were in medical school did you specialize in
9 any area?

10 A No. Medical school was not for specialization.

11 Q Now treating soldiers you're obviously treating some pretty
12 bad wounds?

13 A Yes.

14 Q Okay. Among those wounds were burns?

15 A Mostly gunshot wounds.

16 Q Okay. So you treat soldiers for three years, what happens
17 next professionally for you?

18 A When the war ended in 1970 I went back to my medical
19 school in Lagos and from there got admission to University of Toronto to
20 study anesthesia, which I did for one year. And then I felt it was not my
21 calling, so I switched to surgery.

22 Q Sorry, I didn't hear that word.

23 A I switched to surgery in 1971. Was lucky get into Harvard
24 surgical service at Boston City Hospital in Boston, Massachusetts. And
25 then finished out with Boston University Medical Center from 1972 to

1 '76. So that's the end of my training.

2 Q Was this general surgery you were doing at that time?

3 A Yes.

4 Q Okay. At some point did you start to work in burn care?

5 A Yes. Well, when I left -- when I finished in 1976 I spent two
6 years at Nellis Air Force Base as a major treating soldiers and the
7 civilians. At the end of that in '76 -- '78 I started my own surgery practice
8 in Las Vegas at Southern Nevada Memorial Hospital at the time, which is
9 now University of Las Vegas Medical Center.

10 Q Okay. It became UMC?

11 A Yes.

12 Q Okay. So you were working doing surgeries in UMC starting
13 in 1978?

14 A Yes.

15 Q Okay. And again, were you working specifically in burns, or
16 do you have a lot of -- what is your experience if you can tell the jury
17 working with burn victims?

18 A At the time of my graduation there was no established burn
19 units that dealt exclusively with burns, so had extensive experience in
20 burns. So when you think of places like Boston City Hospital and Cook
21 County Hospital in Chicago and Walter Reed the preeminent burn
22 surgeons were in those places and they handed down their knowledge to
23 aspiring surgeons who were interested in burns. So that's how the early
24 burn surgeons gained their experience until much later on burn centers
25 were developed.

1 So when I started in 1978 UMC was not an established burn center,
2 but had experienced burn surgeons like Dr. John Batdorf who started the
3 burn unit and Kirk Cammack. And UMC or Southern Nevada Memorial
4 Hospital was the only hospital in Nevada that was treating burns
5 exclusively, but it was not a registered burn center.

6 Q Okay. At some point did it become a registered burn center?

7 A Yeah. I believe maybe 10, 12 years after I joined the service
8 of UMC it became a burn -- a recognized burn center and years later was
9 then accredited by the American Burn Association as an established burn
10 center. That happened within the past 10 years.

11 Q Okay. So sometime around 2012?

12 A Yes.

13 Q Okay. And were you involved in getting that accreditation?

14 A Yes, I was treating burns at the time. I was not in the burn
15 hierarchy we'll call it because Dr. Batdorf chose another resident that
16 trained when I joined the hospital to be the burn unit director. So I
17 appealed the fact that I was not included in the burn unit services and
18 after meeting with the chief of staff and the then burn director they got
19 me back into burn unit.

20 Q Okay.

21 A And I continued doing burns until I retired on June 30th,
22 2019.

23 Q Okay.

24 A After 41 years.

25 Q Now you've got your copies of what's in front of you, which

1 are the medical records for UMC for Jeffrey Myers. Did you have an
2 opportunity to go through those?

3 A Well --

4 Q I know they're large.

5 A I know. I have to apologize to -- I retired from active surgery
6 service three years ago. I will be 82 years old in October, so my cerebral
7 faculties are not as sharp as they use to be. I went through much of it as
8 I could and if I omit certain things, please forgive me.

9 Q Okay. And that's fine, we'll just kind of go over it in general.
10 We're not going over all 1,500 pages or whatever it is.

11 Having reviewed this, did you find that Mr. Myers was a
12 victim of an injury?

13 A Yes, he was.

14 Q And what was that injury that you treated him for?

15 A I treated him for electrical flash injuries to his face and upper
16 extremities, left upper extremities particularly.

17 Q Okay. Did you come to a conclusion, an opinion as to when
18 that happened?

19 A About when it happened?

20 Q Yes.

21 A Okay. I believe it was the 5th of June.

22 Q And if you look at the --

23 A 2014.

24 Q Yeah. If you look at the first page there.

25 A I was on call for burn services at the time.

1 Q Okay.

2 A And he was in the emergency room at University Medical
3 Center first by the emergency room physician, Dr. Mike Richter who
4 diagnosed him as having electrical flash injuries.

5 Q Okay.

6 A And the way things worked is the ED makes a diagnosis, then
7 they refer the case to the burn unit and the burn resident, the junior burn
8 resident Dr. Khashwji, Hasanali Khashwji saw him and discussed him
9 with the senior resident who was Carter Richardson [phonetic] and then
10 that's when I got involved as the attending. And all the diagnoses from
11 the emergency room to the junior residents to the senior residents was
12 electrical flash injuries. And I after looking at him I concurred with the
13 diagnosis that it was electrical flash injuries.

14 Q Okay. And was that something that happened shortly before
15 he arrived at UMC?

16 A That is correct.

17 Q Okay. And we have him arriving at UMC early morning of
18 the 7th, late night of the 6th, is that -- do you recall that?

19 A That is correct, yes.

20 Q Okay. Do you recall what degree the burns were?

21 A To answer that question correctly I need go into the
22 classification of burn injuries. For the layman they think of a superficial
23 or a deep burn injury, but to the physician there is a first degree, a
24 second degree and a third degree burn injury and in severe cases a
25 fourth degree burn injury.

1 The first degree is where there is just an instantaneous contact
2 with any burning material that causes a lot of redness, erythema.

3 The second degree is when it goes deeper and you can touch the
4 area it blanches, it can blister, and it causes pain. Both first and second
5 cause pain.

6 The third degree if you get to really be more specific can be
7 divided into a superficial or partial third degree, or a full thickness,
8 partial thickness third degree, or a full thickness third degree. The
9 difference there being that some of the blood vessels of the skin are still
10 intact. Some of the adjoining tissues, the sweat glands, the hair follicles,
11 some of them are gone, but some of them are still present. And the full
12 thickness third degree is when everything is gone, and you see the burn
13 area and you see fat, or you see muscle.

14 And the fourth degree is where you have tendons and ligaments
15 and bone exposed.

16 What Mr. Myers had was a second degree electrical burn, electrical
17 flash burn which caused some blanching, blistering and pain of the
18 affected areas.

19 Q Okay. When you grade the amount of -- the percentage of
20 the body that's affected by burns, is that like physically measured? If I
21 burn my hand do you physically measure and say this is a certain
22 percentage of my whole body or how is that calculated?

23 A Well, it's -- for children that's a different thing, we use a
24 different formula. For adults we usually use what is called the rule of
25 nines, which means that the body is divided into nine percentage areas.

1 The head and neck being nine percent. The upper extremities -- the right
2 upper extremity being 9 percent front and back. The left 9 percent front
3 and back. The trunk, the front is 18 percent, which is a multiple of nine.
4 The back is 18 percent, which is a multiple of nine. The right lower
5 extremity is 18 percent, the front nine, the back nine. The left upper
6 extremity 18 percent. And the perineum one percent. So that gives you
7 a total of 100 percent when the person is burned.

8 Q Okay. The records that are in front of you. Having reviewed
9 them before coming here today, do those appear to be UMC records for
10 Mr. James -- excuse me, Mr. Myers' treatment while he was in UMC and
11 in the burn center?

12 A That is correct. This is UMC record.

13 MR. KUDLER: Your Honor, I would offer these for admission.

14 THE COURT: All right. Will you identify the number for me,
15 please?

16 MR. KUDLER: This is --

17 THE COURT: The record.

18 MR. KUDLER: -- Plaintiffs' Exhibit number 26.

19 THE COURT: 26, Plaintiffs' 26 is offered. Any objection?

20 MR. A. GIOVANNIELLO: What are you offering, the whole
21 entire record?

22 MR. KUDLER: Yes, I am.

23 MR. A. GIOVANNIELLO: Yes, Your Honor. I'm going to
24 object to the entire record.

25 THE COURT: Basis of the objection?

1 MR. A. GIOVANNIELLO: It's over broad. It's 719 pages.

2 THE COURT: You have 7 -- approach both sides.

3 [Sidebar begins at 2:20 p.m.]

4 THE COURT: Both of you have 719 pages. Yours is identified
5 as 26, yours is identified as Defense 205. Well, it seems to be the same
6 number of pages.

7 MR. A. GIOVANNIELLO: Yeah. But I'm only going to put in a
8 couple of exhibits. I've never put in an entire medical record to a jury in
9 my 36 years of practice ever.

10 THE COURT: Well, it's not your motion. So I mean, if these
11 records are generated and maintained by the University Medical Center
12 in the ordinary course and this doctor would -- I mean, it's his motion. I
13 don't see a reason not to. There's no --

14 MR. A. GIOVANNIELLO: Is the jury going to --

15 THE COURT: -- accuracy challenge.

16 MR. A. GIOVANNIELLO: Is the jury really going to read 719
17 pages?

18 THE COURT: No. Of course not.

19 MR. A. GIOVANNIELLO: They're not going to look at that.

20 THE COURT: Not a chance.

21 MR. A. GIOVANNIELLO: There's no way.

22 THE COURT: But it's his trial to -- his case to run, yours as
23 well.

24 MR. A. GIOVANNIELLO: Yeah.

25 THE COURT: So on those grounds I'm going to overrule the

1 objection. 26, Plaintiffs' 26 is admitted.

2 MR. A. GIOVANNIELLO: Okay.

3 THE COURT: And believe me, I'll [indiscernible] you too.

4 MR. A. GIOVANNIELLO: I have the same records too.

5 THE COURT: I'll work -- and if you make a motion you'll
6 probably get them in.

7 MR. A. GIOVANNIELLO: It's already in. I'm just going to be
8 talking about the -- I'm just going to talk about a couple of the --

9 THE COURT: It's up to you.

10 MR. A. GIOVANNIELLO: -- pieces, that's all.

11 THE COURT: It's your case.

12 MR. A. GIOVANNIELLO: Okay.

13 THE COURT: All right.

14 MR. A. GIOVANNIELLO: Thank you.

15 [Sidebar ends at 2:21 p.m.]

16 THE COURT: Ladies and gentlemen, Plaintiffs' 26 has been
17 offered. I've listened to contemporaneous objection side bar and I'm
18 admitting 26.

19 [Plaintiffs' Exhibit 26 admitted into evidence]

20 MR. KUDLER: Thank you, Your Honor.

21 BY MR. KUDLER:

22 Q Doctor, if you could turn to page 652. Looking in the lower
23 right hand corner.

24 MR. A. GIOVANNIELLO: 662? I've got it.

25 MR. KUDLER: 652.

1 MR. A. GIOVANNIELLO: Oh 652. I'm looking at my records.
2 Where's this?

3 THE WITNESS: Got it.

4 MR. A. GIOVANNIELLO: Just one second, Your Honor. I'm
5 trying to get to it. I'm there, Your Honor. Counsel, I'm there.

6 MR. KUDLER: Thank you.

7 BY MR. KUDLER:

8 Q This chart basically describes the rule of nines you just spoke
9 about, correct?

10 A That is correct.

11 Q Okay. And you marked the whole face and neck because
12 that's one section that counts as nine?

13 A That is correct.

14 Q Okay. And then you marked the front and the back of the
15 arm and that's four and a half each?

16 A Yes.

17 Q Okay. So under the rule of nine which is an approximation,
18 he has 18 percent of his body burned?

19 A No. Nine percent.

20 Q I'm sorry?

21 A It's the entire --

22 Q I'm sorry, I thought the face was five. My mistake.

23 A Okay.

24 Q So the head and neck is four and a half?

25 A Yeah.

1 Q And then the arm front and back is four and a half total?

2 A Yes.

3 Q For a total of nine?

4 A And by four and a half you mean the front and the back on
5 the skull, so those were not burned. Just, you know, the -- half of the
6 head and neck that's why it was given 4.5 percent.

7 Q Okay. So he has a total or an approximation of nine percent?

8 A That is correct.

9 Q Thank you. Do you recall a description of the burns, where
10 the burns were on his face?

11 A From the record I reviewed yesterday as the upper part of the
12 face and lower part of the face on the left side.

13 Q Okay. And it kind of went ear to ear?

14 A Yes.

15 Q Okay. And -- so upper part, like forehead?

16 A Yes.

17 Q And lower part --

18 A And the cheek and the ear --

19 Q Okay.

20 A -- and the jaw.

21 Q Okay. Thank you, Doctor. What were -- I mean, he was --
22 what were his chief complaints when he came in, other than, yeah I have
23 these physical burns? What was he complaining of if you recall?

24 A Well, he was in pain, and he was agitated, and he had the
25 obvious injuries to the face and the left upper --

1 Q Do remember how long he -- I'm sorry, for interrupting. Go
2 ahead and finish. Do you remember how long he stayed in the hospital
3 for?

4 A He was there for about a week. I think he --

5 Q Okay.

6 A Yeah.

7 Q And why did you keep him there for a week?

8 A To make sure that the burns did not progress to a degree that
9 they would require surgical intervention. To treat the burns and control
10 them so they don't devolve from one stage to another because
11 improperly treated burns can go from second degree to third degree,
12 which would then require grafting.

13 Q Okay.

14 A So you treat with IV fluids, pain medications, local ointment.
15 And in this case it was treated with Silvadene to the burns initially, to the
16 burns to the upper extremity. Geramycin to the face because we don't
17 use Silvadene on the face. And zinc oxide to the lips because the lips
18 were burnt too. So we made sure that his burns did not progress to a
19 situation where he would require surgical intervention like excising the
20 burns and grafting the burns. So that's how come he stayed that long
21 before he was discharged.

22 Q Are you monitoring for infection at the same time?

23 A Yes. We are monitoring for infection. And at one time he
24 had a positive blood culture, which meant that there was an infection in
25 the bloodstream. So we called the infectious disease consultant who

1 came and saw him, examined him, checked the blood culture result and
2 said that the culture was not a true culture, there was a contaminant. So
3 he did not have any systemic infection. So he was not treated with
4 antibiotics for that.

5 Q Okay. Because there would be no use for antibiotics because
6 there was no systemic infection?

7 A That is correct.

8 Q Okay. In the records it talks about a debridement. Can you
9 tell the jury what a debridement is and why it would be done in a case
10 like this?

11 A I believe his debridement was done in the emergency room
12 by burn unit nurses. The blisters were removed. That is the extent of
13 the debridement, you know, he had as I recall. And there's quite a bit of
14 controversy in the burn circles about debriding blisters, sometimes you
15 just leave the blisters alone. But in order assess completely the extent
16 and depth of the burn you need to remove the blisters to expose all the
17 burnt areas and that will tell you the areas that are second degree and
18 those that are not blistered the -- you know, the first degree area, so. I
19 don't think I took him to surgery, if I did I forgot and I didn't see it there
20 to debrides his burns.

21 We do debridement of burn tissues when you consider that they
22 are third degree burns, so you want to remove the dead tissue to allow
23 the healthy tissue to regrow and grow in and cover the dead area. And
24 you debride the dead tissue, when the time is right you do go back and
25 cover those dead areas that are debrided. That did not happen in this

1 case.

2 Q You followed up with Mr. Myers after he was released from
3 UMC on the initial stay?

4 A That is correct.

5 Q Okay. Do you recall how long you followed up for?

6 A I believe I saw him only once in the outpatient burn clinic.
7 Ordinarily burns that are significant enough to be admitted and to have
8 the kind of treatment that he had are followed in the outpatient wound
9 clinic for prolong period of time to make sure there are no ongoing
10 complications. But as I noted in my outpatient burn record it happened
11 on the job, and it was a Workman's Compensation job. And the
12 Workman's institution, they have their own regulation, their own
13 protocol that they follow.

14 So they allow us to treat patients acutely and when we get them
15 better they go back to Workman's, they have their own clinic, and they
16 have their own physicians. So I saw him only once and he didn't come
17 back to see me, he followed up with Workman's Compensation.
18 Whatever happened after that I do not know.

19 Q I'm looking at now Plaintiffs', in the same book 1147.

20 A 1147?

21 Q Yeah.

22 A Okay.

23 Q And that's titled, "outpatient outgoing wound assessment
24 treatment flow sheet".

25 A Okay, yes.

1 Q Okay. And this was some follow up care that Mr. Myers
2 received under your orders?

3 A That is correct.

4 Q Okay. And this was things that were needed to be done to
5 make sure that wound was healing properly?

6 A That is correct.

7 Q Okay. Was that the appropriate care given in the nature of
8 the injuries?

9 A Yes, it was. In this situation he had a superficial dressing,
10 particle dressing. I believe that's all this page is saying. Aquacel AG,
11 which is sterile dressing that is impregnated with silver to cover the
12 wound burn, protect it while it's healing and prevent it from getting
13 infected.

14 Q And the silver acts as an antibiotic?

15 A Yes.

16 Q Okay. And that's why you're putting silver on there so that z
17 it --

18 A Yeah, the dressings. Aquacel AG, that's what he got, yeah.

19 Q Okay. And it helps prevent infection as well?

20 A Well, it's protecting the wound while the wound is healing.

21 Q Do you recall the lab -- the date -- the last time you saw him?

22 A It was in October. I saw the date yesterday, but I forget it. I
23 saw him last in October.

24 Q Of 2014?

25 A Yes.

1 Q Okay. So a few months after this?

2 A Yes.

3 Q And at that time did you release him from care?

4 A Yes.

5 Q And did you release back to work at that time?

6 A No.

7 Q Okay. Why not?

8 A At that time he was not ready to go back to work. I believe at
9 that time he had developed hypertrophic scarring of his left elbow, which
10 clearly, you know, it was limiting his elbow movements.

11 Q Okay.

12 A And I'm sure why I made the notation that his Workman's
13 Compensation is to signify the fact that any future follow up would be
14 with Workman's Comp.

15 Q The scarring that you mention, the hypertrophic scarring.

16 A Yes.

17 Q Did that also cause sensation loss?

18 A It could, it doesn't in all cases. But all it means is that the
19 burn wound was quite deep and affected the healing process and it was
20 a result in scarring.

21 Q Okay.

22 A If the scarring involved nerves, yes. But in most cases
23 hypertrophic scarring does not really affect, you know, the sensation.

24 Q But it can?

25 A But it can, yes.

1 Q Okay. That scarring stays, it remains, or does it go away?

2 A Well, when you develop scarring from a burn injury or from
3 any kind of injury sometimes they go away with physical therapy and
4 local care, with the injection of steroids and all that. But when it's
5 significant it has to be excised and grafted and that surgery needs to be
6 properly timed because if you go to excise the scar tissue before it's
7 matured when the heals the scar will come back with greater
8 [indiscernible] and with more than what it was originally.

9 So when you have a scar you treat it initially locally with lotion,
10 compression garment, injection of steroids. Wait for maybe a couple of
11 years before going to excise it if it is in a functional area like a joint. So
12 you can excise it, graft it and restore movement to greater capacity as
13 possible.

14 Q And Doctor, are you familiar with the term reasonable degree
15 of medical probability?

16 A Yes.

17 Q Okay. And by that you understand it means more likely than
18 not?

19 A Yes.

20 Q Okay. It's not something that's just possible and it's more
21 than just possible, correct?

22 A Yes.

23 Q But it's not absolutely certain --

24 A Yes.

25 Q -- you would agree with that?

1 A Yes.

2 Q Okay. So it's just more likely than not if you weigh the
3 balance?

4 A Yes.

5 Q Okay. The opinions that you've given here today are they
6 within a reasonable degree of medical probability?

7 A Absolutely.

8 Q Okay. Thank you.

9 MR. KUDLER: I have nothing further.

10 THE COURT: Cross-examination.

11 MR. A. GIOVANNIELLO: Take a second, Your Honor.

12 [Pause]

13 CROSS-EXAMINATION

14 BY MR. A. GIOVANNIELLO:

15 Q Doctor, how do you pronounce your name, is it Ozobia?

16 A That's good enough. Ozobia.

17 Q Ozobia?

18 A Yes.

19 Q Ozobia.

20 A B as in boy, Ozobia.

21 Q Ozobia.

22 A That's it.

23 Q Okay. I don't have too many questions for you, so it's not
24 going to take too long.

25 A Okay.

1 Q Turn to -- you got the book up there?

2 A Yes.

3 Q Okay. We'll use the white book since that's -- I found some
4 of the things in here that I want to talk to you about. Look at page 519.

5 A 519?

6 Q Yeah. Yes.

7 A Got it.

8 Q Okay. This is an emergency department note, correct?

9 A That is correct.

10 Q Is this a note that you would look at when the patient is
11 assigned to you?

12 A We look at it after they're admitted.

13 Q After he's admitted you look at this note, right?

14 A Yes.

15 Q Okay. So where on the bottom of that page where it says, H-
16 E-E-N-T?

17 A Yes.

18 Q And this is already in evidence, so I'll put it up. If I can get it
19 open. Can you just read that for us?

20 A H-E-E-N-T, which stands for head, eyes, ears, nose and
21 throat.

22 "Pupils equal and reactive to light. Moist mucus membranes.
23 Normal mouth. Normal tongue. Burns on lips. Grossly normal hearing.
24 The right and left ear. Burns to both. External portions of the ears. Well,
25 the right and left ear. And then the burns are to both external portions of

1 the ears. Head and face exam, patient has second degree burns to the
2 entire face. Neck exam, patient has first and second degree burns to the
3 entire neck."

4 Q Okay. And that's the whole face, right?

5 A Yes.

6 Q Okay. And do you agree with that diagnosis?

7 A Yes.

8 Q Okay. Turn to page 532. Doctor, first turn to page 531.

9 A Okay.

10 Q That's a handwritten note, is that your note?

11 A No.

12 Q Okay. Then we won't look at it. Then turn to page 532 and
13 533 is what we're going to talk about.

14 A Got them.

15 Q That note is dated 6/7/14?

16 A That is correct.

17 Q Okay. And then on this note here it talks about the
18 extremities?

19 A That is correct.

20 Q And could you read that for the extremity?

21 A "Extremities left arm, forearm with superficial partial
22 thickness burns, approximately one percent to the body surface area."

23 Q And you agree with that --

24 A "Distal pulse and palpable."

25 Q And do you agree with that note? If you look at -- yeah. I

1 think you're looking at the next page. The next page is -- has you and it
2 looks like the resident.

3 A Yeah. It's -- that's the -- there are three residents that saw
4 this patient. There was the second resident that saw this patient after he
5 was admitted, Khashwji.

6 Q Okay.

7 A Yeah.

8 Q Do you agree with the diagnosis of the left arm, on that arm?
9 And I highlighted your signature --

10 A As far as the records go --

11 Q Excuse me?

12 A As far the records go this -- the one percent, you know,
13 estimate is what Dr. Khashwji estimated it to be, which was different
14 from what the emergency room guy physician did and Dr. Tiangco did.

15 Q Okay.

16 A Now --

17 Q [Indiscernible] --

18 A -- based on this I would say, you know, that's what Dr.
19 Khashwji said it was.

20 Q Okay. Well, your name is on there too?

21 A Yes.

22 Q Is that what you say it is?

23 A I should have corrected it at the time, and I did not, so
24 technically I'm going to say yes.

25 Q Okay.

1 THE WITNESS: Could I explain something, Judge?

2 THE COURT: You can answer the question.

3 THE WITNESS: Okay. Now when you have a burn injury the
4 initial assessment sometimes varies from the subsequent assessment,
5 especially if they're not deep burns. There's -- some of them are
6 superficial. Because by the time somebody else comes around the
7 redness is going to disappear and all you see are the deeper areas,
8 which is probably what happened when Dr. Richter, the emergency room
9 physician saw him there was a whiter area. And some of those white
10 areas were superficial first degree burns.

11 Then on subsequent examinations those colorations have
12 disappeared. And that could account for the discrepancy in what the
13 emergency room physician saw, what Dr. Tiangco, the first resident saw,
14 and Dr. Khashwji subsequently saw hours later. But again, I'm saying
15 since I've been corrected [indiscernible] but with the explanation I'm
16 giving the four and half percent was a more accurate diagnosis than the
17 one percent.

18 BY MR. A. GIOVANNIELO:

19 Q Okay. Is Dr. Khashwji I think --

20 A Khashwji.

21 Q Khashwji?

22 A Yeah.

23 Q Okay. Is Dr. Khashwji a wound care resident?

24 A Is a resident.

25 Q A resident?

1 A Yeah.

2 Q But wound care?

3 A Well, yeah. They all rotates through.

4 Q Okay.

5 A Yeah.

6 Q But Dr. Khashwji wasn't --

7 A At that time, he was.

8 Q Okay. So Dr. Khashwji at that time was a wound care

9 resident?

10 A Yes.

11 Q Okay. And at that time, you're the wound care doctor?

12 A Yes.

13 Q Okay. I might have to switch books, one sec. All right.

14 Doctor, I have to switch books.

15 A Okay.

16 Q Because I can't find this in the other book.

17 A All right.

18 MR. A. GIOVANNIELLO: It's -- may I approach Your Honor?

19 THE COURT: Yes.

20 BY MR. A. GIOVANNIELLO:

21 Q It's not this book.

22 A It's not this one?

23 Q No. I think it's the middle book, right? That big fat book right

24 there.

25 A There are two big fat ones. This --

1 Q Yeah. Let me see that fat one.

2 A This one here?

3 Q Yeah. That's -- no, the black one.

4 A This one?

5 Q Yeah.

6 A Okay.

7 Q Let me see if that's it. Yeah, that's it. Okay, great. I'm going
8 to have you turn to the right page when I go back there, okay?

9 A Okay.

10 Q And that book, and it's going to be Exhibit 205, and it's page
11 27.

12 A 27.

13 Q And it's Defendants' Exhibit 205. And it's the same medical
14 records that are in -- except I can't find this in the medical records
15 provided by Plaintiff.

16 A That is correct.

17 Q I know it's in there, I just can't find it. So looking at 27, this
18 looks like a discharge summary.

19 A Yes.

20 Q Is that correct? Okay. And now so he was discharged on
21 6/15/14, correct?

22 A Yes.

23 Q Okay. And is that because he was recovering from his
24 injury?

25 A Yes.

1 Q Okay. And you testified, he was never on any antibiotics
2 during this hospital stay, correct?

3 A We did not -- I don't recall putting put him on antibiotics.

4 Q Well, it says right here, he was not on -- if you read it, it says,
5 "hence he was never on any antibiotics during his hospital stay".

6 A Yes.

7 Q Okay. And the condition is improved, correct?

8 A Yes. Just to be sure, Gentamicin is an antibiotic, but it's
9 locally applied to the wound.

10 Q Right.

11 A It's not given systemically.

12 Q Well, after this he went to the outpatient burn clinic, right?

13 A Yes.

14 Q Okay. Now in the outpatient burn clinic, let me see if I can
15 get you a better note. Here we can jump to the white book again.

16 A Okay.

17 Q So just take that black book, put it aside. On the white book,
18 go to page 1176. And tell me if that's your handwriting, if that's your
19 note.

20 A Yes. It's my writing.

21 Q Is that your writing?

22 A Yes.

23 Q Okay. Put that on the board. Think I got to make it smaller.
24 Can you tell me what is that date?

25 A 7/11/14.

1 Q Okay. I need to make this -- okay. And can you read this
2 note for us? Because I couldn't read it.

3 A Okay. "Follow up. Electrical flash burn to face, left arm,
4 axilla on 6/11. Admitted, discharged. First visit since discharge on 6/20.
5 All areas completely healed. Lotion. Discharged".

6 Q I'm sorry. What was that? That's what, lotion what?

7 A Lotion. Bottom is discharge.

8 Q Lotion, discharge.

9 A Observation for discharge.

10 Q Okay. So then his burns, his arm and his face were
11 completely healed as of 7/11/14?

12 A Yes.

13 Q Okay.

14 A No, 7/12.

15 Q 7/12?

16 A Yes. Is that 12 there? 7/11. 7/18/14.

17 Q Okay.

18 A The next page.

19 Q So it's July 18, 2014. That's what that note is?

20 A The second note, yes.

21 Q Okay. No. Not the second note. I'm looking at the -- this
22 note right here.

23 A Oh, the very first --

24 Q 1176. We'll look at the second note next, but 1176 --

25 A Okay.

1 Q -- is what date?
2 A Is 7/11.
3 Q Okay. 7/11. Now the second note that you're looking at,
4 which you just said is 1177, right?
5 A Yes.
6 Q And that's dated 7/18?
7 A Yes.
8 Q Okay. And that's when he comes in with a new complaint?
9 A Yes.
10 Q Okay. What was that complaint?
11 A He had a lump in his left axilla.
12 Q Okay. What is a left axilla?
13 A Left axilla is the armpit, left armpit.
14 Q That's a left armpit?
15 A Yes.
16 Q Okay. What was the cause of that lump?
17 A The cause of the lump was possibly an early abscess, early
18 infection.
19 Q Uh-huh. Do you know where that came from?
20 A It's going to be speculation now.
21 Q It's going to be what, sir?
22 A Speculation as to where it came from.
23 Q Speculation, okay.
24 A Number one, because he had an electrical burn injury in that
25 location, there might have been some skin elements that had been

1 embedded in the subcutaneous tissue and over time, festered and
2 became infected --

3 Q Sure.

4 A -- over time.

5 Q Right.

6 A The second possibility is just happens, you know, from time
7 to time people develop burn -- I mean abscesses in the armpits from an
8 infected hair follicle.

9 Q Okay.

10 A Irrespective of if there was a previous injury or not.

11 Q But is there any other, other than those two?

12 A Well, there are situations where people develop what is
13 called hidradenitis suppurativa, which is a condition that affects the
14 lymph plants in the armpit, multiple of them get infected.

15 Q Okay.

16 A But it's -- so that's a distant possibility.

17 Q Okay. So now you've given me three possibilities?

18 A Yes.

19 Q Okay. But in the beginning you said it's speculation, right?

20 A It's all speculation.

21 Q So just don't know what -- where that came from, right?

22 A Yes.

23 Q Okay. Did you drain it?

24 A No. At that time it was early. So I put him on antibiotic,
25 Cipro.

1 Q Okay. You put him on Cipro. Did that cure it?

2 A I don't think there was a return visit after that, but my notes

3 said emergency room, that's ER, if no improvement for IMD.

4 Q Okay.

5 A So I don't if it continued, and he went to the ED.

6 Q Okay.

7 A I don't know that.

8 Q So is July 18, 2014 the last time you saw him?

9 A I believe there is a note somewhere that showed that I saw

10 him last in October from the records I reviewed yesterday.

11 Q In October. Can you --

12 A Yeah.

13 Q Do you know where that is?

14 A I believe that was the last time I saw him, but --

15 Q I didn't see that. That's why I'm asking.

16 A Okay. There is --

17 Q Oh, there is one.

18 A There is a note here dated 10 October, 2014. That's the one I

19 was referring to earlier. It says, on top, it says workman's comp June

20 6th --

21 Q Can you tell me what page? Look at the bottom.

22 A This is 1207.

23 Q 1207. Okay. That's an October 3, 2014 note?

24 A That is correct.

25 Q Okay. Let's put that up. Okay. That's your note?

1 A Yes.

2 Q Can you read that for us?

3 A First line was Workman's Comp way in the top. "June 6th,
4 admitted, discharged. June 15, inpatient for nine days. Electrical flash
5 burns to face, upper extremities. No surgery. Has compression
6 garment. To continue with the compression garment and then return to
7 clinic six weeks".

8 Q Okay. And that's your last note, right?

9 A That's the last note.

10 Q Okay. Now what was the purpose of this note?

11 A Well, the purpose of the note was to document that he came
12 to the clinic to the scene and I'm sure prior to that he had developed --

13 Q The abscess.

14 A -- hypertrophic scarring of the elbow and I prescribed
15 compression garment. So in this visit I documented that he had his
16 compression garment and I wanted him to return to the clinic in six
17 weeks.

18 Q Okay. And this is your last note, right?

19 A That was my last note.

20 Q So you didn't see him six weeks after this?

21 A No.

22 Q Okay. Like I promised, Doctor, I didn't have that much to ask
23 you. Thank you so much.

24 A Okay. Thanks a lot.

25 THE COURT: Redirect.

1 MR. KUDLER: No. Thank you, Your Honor.

2 THE COURT: This witness is about to be excused. Any
3 additional -- anything additional from the jury regarding this witness?
4 Seeing no hands. Please step down, sir.

5 THE WITNESS: Okay.

6 THE COURT: Ladies and gentlemen, we're going to take our
7 afternoon recess at this time. Remember during this recess you must
8 not discuss or communicate with anyone, including fellow jurors in any
9 way regarding this case or its merits by either voice, phone, email, or
10 text, the internet, or other means of communication or social media.

11 You may not read, watch, listen to any report of or
12 commentary on this trial by any means. You may not do any research,
13 constituting any research such as consulting dictionaries, using the
14 internet or reference material. Don't make any investigation, test
15 theories of the case, recreate any aspect of the case or in any way
16 investigate the case or learn about the case on your own. You may not
17 form or express any opinion on any subject regarding this case until it's
18 finally submitted to you.

19 Now this is a 15 minute afternoon recess, ladies and
20 gentlemen. More similar to what we did I think I did earlier yesterday
21 with you. Use the facilities. Don't leave the floor. We'll be back to work
22 at 20 minutes after 3:00. Follow the Marshal, please.

23 THE MARSHAL: Please rise for the jury.

24 [Jury out at 3:02 p.m.]

25 [Outside the presence of the jury]

1 THE COURT: All right. Record should reflect we're outside
2 the presence of the jury.

3 Mr. Kudler, where are you headed next?

4 MR. KUDLER: I believe Lindsey Coombs.

5 THE COURT: Okay.

6 MR. KUDLER: Might be -- I told her 3:00. So she might be --

7 THE COURT: Perfect.

8 MR. KUDLER: -- waiting in BlueJeans.

9 THE COURT: Oh, she's going to testify remote? All right.
10 Fine. And who is she?

11 MR. KUDLER: She's the psychotherapist.

12 THE COURT: And you anticipate that taking us up to close
13 for today?

14 MR. KUDLER: I don't think it's going to take two hours for --

15 THE COURT: Okay. Do you have others behind her and
16 waiting?

17 MR. KUDLER: I could put up one of the Plaintiffs.

18 THE COURT: Perfect, perfect. All right. Let's tighten up a
19 little bit on this evidence because -- are there exhibits that we can
20 stipulate to in terms of admission? I mean, we've been dealing -- dueling
21 dealing with Plaintiffs' and Defense Exhibits 205 and 26 respectively.
22 They're both the same. I hesitate -- I had -- Mr. Giovanniello, you were
23 back and forth in the -- in your exhibits. Although they're the same you
24 just couldn't find the one you were looking for in Plaintiffs' file, so you
25 jumped to yours. I didn't hear an objection; I didn't find it objectionable.

1 Do you want to admit your 205 even though they are the same
2 documents?

3 MR. A. GIOVANNIELLO: No.

4 THE COURT: All right.

5 MR. A. GIOVANNIELLO: I don't see the point in that. We
6 have the documents in there.

7 THE COURT: Okay. Are there any others that we're going to
8 find ourselves with the same conversation? Huge volumes of paperwork
9 for them.

10 MR. KUDLER: It's the only one that's that huge.

11 THE COURT: This is the one?

12 MR. KUDLER: This is it.

13 THE COURT: All right. Fair enough. That's all I have from
14 my perspective outside presence. Anything from Plaintiff?

15 MR. KUDLER: No, thank you.

16 THE COURT: And Defense?

17 MR. A. GIOVANNIELLO: No.

18 THE COURT: All right. So 20 minutes after 3:00.

19 [Recess taken from 3:05 p.m. to 3:19 p.m.]

20 THE COURT: Rack them, stack them. Are you good?

21 MR. KUDLER: I'm just waiting for the witness to come in.

22 THE COURT: Okay

23 MR. KUDLER: Hey, you get ahold of Coombs?

24 UNIDENTIFIED SPEAKER: Not yet.

25 MR. KUDLER: Okay.

1 THE MARSHAL: Please rise for the jury.

2 MR. KUDLER: She'll be logging in shortly. Okay.

3 [Jury in at 3:19 p.m.]

4 THE MARSHAL: Please be seated.

5 THE COURT: Ladies and gentlemen, we're on the record in
6 A735550. It's Myers vs. THI of Nevada at Cheyenne. Record should
7 reflect the presence of the representative of the Plaintiff and Defense. All
8 members of the jury kind of do appear to be present.

9 Will parties stipulate to the presence of the entire panel?
10 Plaintiff?

11 MR. KUDLER: Yes, Your Honor.

12 THE COURT: And Defendant?

13 MR. A. GIOVANNIELLO: Yes, Your Honor.

14 THE COURT: Thank you. The record should reflect we
15 remain in State's -- excuse me, we remain in Plaintiffs' case in chief.
16 We're ready to call the next witness.

17 Ladies and gentlemen, I've been informed by the parties that
18 we're moving into examination of a witness by electronic means. That
19 means if you've done Zoom, you know where we're headed. Frankly, it's
20 as a consequence of COVID, we're broadened our ability to bring in
21 evidence, and so we're going to try to use the technology in order to
22 make that happen efficiently. The rules are exactly the same.

23 Is this our witness?

24 MR. KUDLER: No.

25 THE COURT RECORDER: No, Your Honor. That was

1 somebody else that was wanting to watch the --

2 THE COURT: Oh, it's fine.

3 UNIDENTIFIED SPEAKER: He's been on.

4 THE COURT: Okay. And you've been -- Mr. Kudler, you've
5 been in communication with -- right? You've been in communication
6 with the witness?

7 MR. KUDLER: Yes, I have.

8 THE COURT: And they're trying to log on now based upon
9 what your staff is telling you; is that fair?

10 MR. KUDLER: That's correct. Thank you.

11 THE COURT: Well, then let's all stare at the TV.

12 MR. KUDLER: At least it's not a nighttime emergency pattern
13 or something.

14 [Pause]

15 THE COURT: All right. We've got a new entry into -- there
16 we go. All right. The record should reflect a new entry into our Blue
17 Jeans system.

18 Mr. Kudler, this is your witness. Please identify your witness
19 for the record and your jury.

20 MR. KUDLER: This is Lindsey Coombs, the psychotherapist
21 who has been treating Mr. James.

22 THE COURT: Ms. Coombs, can you hear me?

23 MS. COOMBS: Yes.

24 THE COURT: All right. Ladies and gentlemen, can you all
25 see the TV? Seeing no one indicating a difficulty in that effort, Ms.

1 Coombs, I'm going to have you sworn as any other witness might be
2 sworn by my clerk. Please raise your right hand.

3 LINDSEY COOMBS, PLAINTIFFS' WITNESS, SWORN

4 THE CLERK: Please state and spell your first and last name
5 for the record.

6 THE WITNESS: Lindsey Coombs, Lindsey is L-I-N-D-S-E-Y,
7 my last name is Coombs, C-O-O-M-B-S.

8 THE COURT: Counsel, your witness.

9 MR. KUDLER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. KUDLER:

12 Q Ms. Coombs, I'd like to go into your background first.

13 THE COURT: I apologize. I'm still learning my protocols.

14 Ms. Coombs, as your trial judge I want to make sure that the
15 door is closed to the room, I need you to identify where you are at, and
16 that you are alone, no one's sitting behind the camera or listening to
17 your testimony; is that true?

18 THE WITNESS: That is true.

19 THE COURT: Very good.

20 THE WITNESS: I am at home.

21 THE COURT: Are you currently -- does home -- is home
22 Nevada or is home elsewhere?

23 THE WITNESS: It's in Las Vegas, yes.

24 THE COURT: All right. Mr. Kudler, your witness.

25 MR. KUDLER: Thank you.

1 BY MR. KUDLER:

2 Q Ms. Coombs, I want to get into your background first. Where
3 did you go to college?

4 A I've been to a few. I have my bachelor's from UNLV, my
5 master's from the Chicago School of Professional Psychology in
6 Chicago, and I am currently working on my PsyD, which is out of the
7 Chicago School of Professional Psychology in L.A.

8 Q Okay. And what would that degree be when you complete
9 it?

10 A A job in clinical psychology.

11 Q Okay. So you'll be a PhD or what?

12 A PsyD

13 Q Okay.

14 A PsyD.

15 Q So a psychiatric or psychological doctor?

16 A A psychologist.

17 Q Okay. How far into that program are you?

18 A 95 percent.

19 Q Okay. What do you have left?

20 A Just a couple of lines in my dissertation.

21 Q Okay. When do you anticipate that will be done?

22 A Hopefully, sometime this year.

23 Q Okay. And once that's done and approved by the school you
24 will be a PsyD?

25 A Yes.

1 Q Thank you. Now your masters is in what degree?

2 A Forensic psychology.

3 Q Okay. And are you licensed in the State of Nevada?

4 A Yes.

5 Q And what's your license in?

6 A I'm a licensed clinical professional counselor.

7 Q Okay. And as a licensed clinical professional counselor, what
8 do you do?

9 A I work with lots of different clients for children, adults,
10 families, groups, in their homes, at the office, online, with an array of
11 mental health disorders.

12 Q Okay. Does one of those include post-traumatic syndrome?

13 A Yes, it does.

14 Q Sorry, I got that wrong. PTSD.

15 A Disorder, not syndrome.

16 Q Thank you. And how long have you been treating patients
17 with PTSD?

18 A I've been licensed since 2014, I had my internship since 2012,
19 I had my school internships since 2009, so I would say since 2009.

20 Q Okay. Can you tell me what percentage of your practice
21 involves patients who you've diagnosed or who have previously been
22 diagnosed with PTSD?

23 A A percentage of my total cases?

24 Q Yeah. Currently.

25 A Oh, okay. Currently, I would say 75 percent.

1 Q Okay. Are there any certifications that you have outside of
2 your master's degree? Any license?

3 A Well, I have my state license, so no.

4 Q Okay. Did you have to pass a test to get your license?

5 A Oh, absolutely, yes.

6 Q Okay. How long a test was that?

7 A How long? How long was it?

8 Q Yeah, was it a one-hour test, was it a two-day test?

9 A Well, it was a few hours. It was pretty torturous.

10 Q Okay. Have you ever had -- have you been licenses in any
11 other state other than Nevada?

12 A No.

13 Q Have you ever had your Nevada license suspended or
14 revoked?

15 A No.

16 Q When did you first start outside of internships, when did you
17 first start to work professionally?

18 A In 2014.

19 Q Okay. And where was that?

20 A I've worked for a few mental health agencies. You want the
21 names of the agencies?

22 Q No, just kind of what work you did.

23 A Oh, okay. Well, in 2018 I opened my own private practice.

24 Q Okay. So from 2014 to 2018 you were working, doing the
25 same job but through mental health agencies?

1 A Right.

2 Q Okay. So in 2018 you open your own practice; what's the
3 name of that practice?

4 A Summit Psychotherapy.

5 Q And where is that located?

6 A It's in Pahrump, Nevada.

7 Q Okay. And some of your work is done via Zoom?

8 A Yes.

9 Q Okay. Was that something you started with when the
10 pandemic hit or was that something you were doing before, as well?

11 A I was doing it before, as well, but it became a bulk of my
12 clientele after the pandemic started.

13 Q When you're treating somebody by Zoom, typically, they
14 have the camera on, as well?

15 A Yes.

16 Q Okay. Are you able to do your job in light of the fact that
17 they are not physically in the same room as you?

18 A Yes.

19 Q Okay. Let's talk about -- we'll go into this case here. Do you
20 recall when -- and you have a set of your records there?

21 A I'm sorry?

22 Q You have the records that have been produced in front of
23 you?

24 A Yes.

25 Q Okay. And I think I sent you a copy with numbers on it, Bates

1 stamped? Did we send you something like that recently?

2 A I'm not sure.

3 Q If not, that's okay, because your records are pretty short.

4 A I don't.

5 Q Okay. We could just refer to dates and things on them, on
6 page numbers.

7 A Okay.

8 Q When did Mr. Myers, actually, Mr. James first present to
9 you?

10 A August of 2020.

11 Q Okay. And what did he tell you he came for?

12 A He was referred by his primary care physician for treatment
13 related to PTSD.

14 Q Okay. And that was Dr. Craig?

15 A Yes.

16 Q Okay. All right. Are you familiar with Dr. Craig? Or at least
17 familiar --

18 A I don't know him --

19 Q -- at least familiar --

20 A -- personally, but through this, yes.

21 Q Okay. Other than Mr. James, had Dr. Craig referred you to
22 any other patients?

23 A I don't know that he's referred anybody to me, but I -- there
24 are multiple clients of mine that also see him.

25 Q Okay. So he was referred over by Dr. Craig's office; when's

1 his first visit with you?

2 A I believe the beginning of August, the 8th.

3 Q Okay.

4 A Of 2020, I'm sorry.

5 Q And when he came, did Dr. Craig tell you what he was
6 coming for?

7 A I never spoke with Dr. Craig directly.

8 Q Okay. The referral, did it come with a diagnosis or a possible
9 diagnosis?

10 A Yeah, I -- yeah, just kind of like a -- something to look at for --
11 for a mental health professional to diagnose.

12 Q Okay. So Mr. James shows up, and you -- did you see him in
13 the office in Pahrump?

14 A No, it's online, and it's through Simple Practice, which is my
15 EHR.

16 Q Okay. And that's similar to Zoom, but it's --

17 A Pretty much the same.

18 Q It has some extra protocols to ensure privacy?

19 A Yes.

20 Q Okay.

21 A HIPAA compliant, yes.

22 Q Okay. How did that session go? How did you start that
23 session?

24 A Well, he had emailed me through my website, I believe, prior
25 to that to set up an appointment, and then we set up a date, and then I

1 did my initial evaluation where I just ask an array of questions covering
2 every aspect of his life, including what Dr. Craig wanted him to speak
3 with me about.

4 Q Okay. And after having that initial meeting, did you come up
5 with a diagnosis for Mr. James?

6 A I did.

7 Q And what was that diagnosis?

8 A Post-traumatic stress disorder.

9 Q Okay. How is it that you as a clinician made the diagnosis?
10 Are there certain things that have to fit a pattern?

11 A Yes.

12 Q Okay.

13 A There's a series of questions that we ask to narrow down
14 where there may be difficulties in one's life, and further narrow it down
15 from there. So if somebody says that their -- that they've experienced
16 something traumatic, we narrow it down, and we go through the criteria.
17 They don't know it, but I know it, that we go through the criteria and
18 that's how we -- if they -- if they meet enough of the criteria, and that's
19 how we come up with a diagnosis.

20 Q How many, for PTSD, how many criteria are there?

21 A There are eight. Yes, eight, with subsets within one of those.

22 Q I'm just trying to find what I'm looking -- the record I'm
23 looking for. Excuse me one minute. Just not finding that group of
24 documents.

25 [Pause]

1 MR. KUDLER: Excuse me, Your Honor, and jury. I don't
2 know why I'm not seeing it in front of me. There they are.

3 BY MR. KUDLER:

4 Q I want you to take a look, and there was a letter that you
5 wrote on September 12th of 2021.

6 A Yes.

7 Q And it was written to whom it may concern. Do you recall
8 writing that letter?

9 A Yes.

10 MR. A. GIOVANNIELLO: Hold on one second.

11 THE COURT: Do you have a Bates on that?

12 MR. A. GIOVANNIELLO: Yeah.

13 MR. KUDLER: 337, 38, and 39.

14 MR. A. GIOVANNIELLO: I'm going to object. That's not been
15 offered yet. Okay. Well, Your Honor, then can we approach?

16 THE COURT: Yes.

17 THE COURT RECORDER: I need one second. I'm going to
18 get her off.

19 THE COURT: Okay.

20 UNIDENTIFIED SPEAKER: I'll just speak with the witness, so
21 she knows we'll be back on. She's going to go blank probably for a
22 minute.

23 THE COURT: We're going to take you off the record.

24 UNIDENTIFIED SPEAKER: Okay.

25 MR. KUDLER: Sorry. Disconnect. Sorry. Disconnect her.

1 THE COURT RECORDER: Now we're back on, Your Honor,
2 go ahead and tell her. Sorry.

3 THE COURT: All right. Ms. Coombs, I have to discuss with
4 counsel, both counsel, some documents here, so we're going to mute
5 you or take you off, but do not go away.

6 THE WITNESS: Okay.

7 THE COURT: So take me, and let's go sidebar, and white
8 noise, please.

9 [Sidebar begins at 3:37 p.m.]

10 THE COURT: So where are we in your exhibits?

11 MR. KUDLER: This is Exhibit 14, which is her records.

12 THE COURT: 14. Okay. So these are her records?

13 MR. A. GIOVANNIELLO: Yeah, her records.

14 THE COURT: Okay. And you're headed to specific pages
15 within those records?

16 MR. KUDLER: Yeah, 337, 8, 9.

17 THE COURT: 337, okay, and these are her reports, so this is
18 to whom it may concern.

19 MR. A. GIOVANNIELLO: One, it's long after discovery cutoff,
20 that's number one.

21 THE COURT: It had been disclosed?

22 MR. A. GIOVANNIELLO: What?

23 THE COURT: Is this disclosed to you?

24 MR. A. GIOVANNIELLO: To me?

25 THE COURT: Yeah.

1 MR. A. GIOVANNIELLO: Yeah.

2 THE COURT: Okay.

3 MR. A. GIOVANNIELLO: Yeah, but it came after discovery
4 cutoff, number one. Number two, if you look at this thing, this whole
5 night was blaming defense, the defense for continuing trial. How is that
6 -- that's not even close to relevance. It's essentially casting blame on
7 defense counsel. Now Your Honor, one thing you need to understand is
8 I'm the fourth defense counsel on this case, so I didn't come in until the
9 end of '21.

10 THE COURT: Seven trial dates have been vacated, most of
11 which occurred at the request the defense. Each trial's been vacated to
12 prolong --

13 MR. A. GIOVANNIELLO: Your Honor, there was only one
14 date that I was in the hospital, and that's why it was continued because
15 of me, but this whole thing is talking about how the defense caused him
16 problems. Not how the --

17 THE COURT: Mr. Kudler?

18 MR. A. GIOVANNIELLO: Not how the College Park caused a
19 problem, but the defense.

20 MR. KUDLER: It explains the diagnosis of PTSD, it explains
21 the criteria of PTSD and how she determined the criteria.

22 THE COURT: I've got negligence and false statements on
23 behalf of defense counsel result in multiple trial delays. I'm sustaining
24 the objection on those grounds. It's more prejudicial than probative. I'll
25 allow the witness to testify to her conclusions and findings outside the

1 four corners of that component.

2 MR. KUDLER: I would also just mention that, and I'll use this
3 one, that I'll also mention that she's going to talk about how everything
4 combined [indiscernible].

5 THE COURT: I guess the general stress of litigation, yes, but
6 calling the defense -- the seven trial dates vacated, and that last
7 conclusion, I find the -- the negligent request for delays to re-quantify,
8 that's --

9 MR. KUDLER: That's not a problem.

10 THE COURT: I'm not going to let her do that.

11 MR. KUDLER: That's fine. Then we'll remove it out from the
12 professional record.

13 THE COURT: That's correct. All right.

14 MR. KUDLER: Thank you, Your Honor.

15 THE COURT: Thank you.

16 [Sidebar ends at 3:40 p.m.]

17 THE COURT: All right.

18 THE COURT RECORDER: One second, Your Honor. Let me
19 go back on so she can hear.

20 THE COURT: The --

21 THE COURT RECORDER: She's back on, Your Honor.

22 THE COURT: Thank you. The interposed objection to
23 Plaintiffs' 335 through 337 is sustained, or 337 is sustained. Let's move
24 forward in the examination.

25 MR. KUDLER: Thank you, Your Honor.

1 BY MR. KUDLER:

2 Q Ms. Coombs, let go to the December 26th of 2020 note that
3 you wrote. Do you have that in front of you?

4 A I -- I don't, but if you would refresh my memory?

5 Q Okay. I'm -- could you give me the screen?

6 THE COURT RECORDER: I'm sorry?

7 MR. KUDLER: Could you give me the screen or no?

8 THE COURT RECORDER: No, you can't -- that's why I said
9 you have to add the exhibits to them.

10 MR. KUDLER: Okay.

11 THE COURT RECORDER: Because we can't do both.

12 BY MR. KUDLER:

13 Q Yeah, so I'm looking at a note that you authored. It was a
14 letter to myself, actually, on December 26th of 2020.

15 A Okay.

16 Q Do you have that in your file?

17 A Somewhere. It will take me a second to find it.

18 Q Okay.

19 MR. A. GIOVANNIELLO: Your Honor? Page 2 of this is the
20 same objection.

21 THE COURT: Well, I'm not -- allowed any documents in here,
22 and with the limitations that I've articulated sidebar I'm going to allow
23 the witness to testify.

24 THE WITNESS: I apologize. You said December of 2020,
25 correct?

1 BY MR. KUDLER:

2 Q Correct. December 26th.

3 A I have all the other ones right in front of me. If -- well, can
4 you refresh my memory?

5 Q Sure. It's a letter addressed to myself regarding how Mr.
6 James fits the criteria?

7 A Oh, okay. I may have to find it in my computer. I think I have
8 that one printed. I should, what I had them [indiscernible]. Okay. I can't
9 find it. I can find it on my computer, but I don't want to mess this up
10 so --

11 Q Okay. Let me ask you, do you have a rundown on whether it
12 would be in these notes or somewhere else, I asked you how Mr. James
13 fits the criteria for the diagnosis?

14 A Yes.

15 Q Okay. So let's just go ahead and go through them. First of
16 all, where --

17 A I'm not --

18 Q -- where do this criteria come from? Are these something
19 that you just invented, or where do they come from?

20 A No, they come from the DSM IV, which is the fifth edition of
21 the diagnostic and statistical manual of mental disorders.

22 Q Okay. And that's something that all psychiatrists and
23 psychologists use?

24 A Yes. All mental health professionals that deal with anybody
25 diagnosed with a mental health disorder, yes.

1 Q Okay. So there's eight criteria. What is the first criteria?

2 A So the first criteria would be that the patient has been
3 exposed to a threat to death or a serious injury.

4 Q Okay. And how did Mr. James meet that?

5 A That he was -- he experienced an arc-flash explosion in June
6 of 2014.

7 Q Okay. And criteria B, there's five sub-parts to it?

8 A Yes. So the five parts to B, so these are intrusion symptoms,
9 so things that occur that you don't want to occur. So intrusive thoughts
10 or memories, they kind of just pop up out of the blue, related to the
11 traumatic event, and then other intrusive symptoms are distressing
12 dreams, nightmares, dissociative reactions like flashbacks, feeling like
13 you're reliving it again, psychological distress, exposure to internal or
14 external cues that are similar to the event, the traumatic event, so the
15 explosion, and physiological reactions to internal or external cues that
16 resemble the explosion.

17 Q Okay. And he demonstrated all of those?

18 A Yes.

19 Q Okay. Criteria C; what is criteria C?

20 A So that would be persistent avoidance of stimuli associated
21 the arc-flash explosion, and the key is that all of this happens after the
22 traumatic event. So for the avoidance of the stimuli, that would be like
23 avoiding distressing memories, thoughts, or feelings, and avoiding
24 external cues.

25 Q And he demonstrated; how did he demonstrate that?

1 A So avoiding, like avoiding discussion, avoiding any kind of
2 discussion with anybody about it, avoiding the actual location where it
3 occurred, avoiding conversation regarding the location where it
4 occurred, that would be avoiding like the distressing memories and
5 thoughts, conversations, and then efforts to avoid the external, people,
6 places, conversations, as well. So with that, so with that, sometimes if
7 somebody's trying to avoid conversation or location or even just maybe
8 driving in Vegas and something reminds him of the site or hearing a
9 sound, all of those things just set him on like high alert, like fight or flight
10 kind of.

11 Q Okay. And that's something that he, in fact, demonstrated?

12 A Yes.

13 Q Okay. Criteria D; what is that?

14 A So criteria D is negative alterations in cognition, so negative
15 thoughts and mood. So feeling like a constant, like a negative emotional
16 state, this is never going to get better, this is never going to end, this is
17 never going to go away, I'm forever going to feel this pain, and I'm
18 forever going to feel defeated and fearful and horrified. And then
19 feelings of detachment or estrangement from others, not being fully
20 present, he's not able to be fully present with his family or with
21 colleagues.

22 Q Okay. And he demonstrated those two parts of the category,
23 criteria D?

24 A Yes.

25 Q Okay. And how about criteria E; what is that?

1 A So this one is alterations in arousal and reactivity. So this is
2 like anger outbursts, irritable behavior, irritable mood, and those are
3 with -- with little or no provocations. There's -- it's not something that's
4 been building up, it just happens out of nowhere because he's already
5 on high alert and his brain is already very busy, so he doesn't have a lot
6 of room to make decisions and -- and think things through all the time,
7 especially if he's triggered by something that reminds him of the event,
8 like a sound or maybe like a flash or a sound of like electricity or
9 something, and a hypervigilance is one of them.

10 Hypervigilance is like really heightened sense of everything that's
11 going on around you, and that's kind of how we protect ourselves, so
12 with PTSD your sympathetic nervous system which is your fight or flight
13 is always on, it's activated all the time, and so you're always on high
14 alert which is exhausting. And then he exhibited problems with
15 concentration, and also sleeping difficulties. A lot of times that was
16 paired with nightmares that would keep him up most of the night.

17 Q Okay. And what is criteria F?

18 A That these symptoms have lasted more than a month.

19 Q Okay. And at this point, how long had it lasted?

20 A At this point, like as of today?

21 Q No, as of the time that you diagnosed him?

22 A Oh, okay. So it had started in 2014, end of 2014, beginning of
23 2015, so five years.

24 Q Okay. Criteria G, the seventh one; what is that?

25 A That -- that it's clinically significant. So for something to be

1 clinically significant, that means that it impairs daily functioning, it
2 impairs social, occupational, or other areas of his life, functioning in all
3 of those areas.

4 Q Okay. Did he exhibit and demonstrate that criteria?

5 A Yes.

6 Q And how so?

7 A So as far as like with PTSD, it's clinically significant when
8 somebody has nightmares and they can't sleep at night because the
9 nightmares wake them up and they can't go back to sleep because it --
10 your body is not in fight or flight mode, now it's in a heightened sense,
11 so you can't go back to sleep and you have to work the next day, and
12 you have to function the next day, and you have to be with your family
13 the next day, and those things are very difficult to do when you don't
14 have very much sleep.

15 Q And the last criteria; what is that?

16 A That the symptoms are not related to any substance use or
17 any other medical condition.

18 Q Okay. Did you find that to be the case?

19 A Yes.

20 Q Okay. In your opinion, and I just want to make sure we're
21 clear, does Mr. James have PTSD?

22 A Yes, he does.

23 Q And that was caused by what?

24 A The arc-flash incident or explosion in June of 2014.

25 Q Okay. And you still see him?

1 A Yes.

2 Q At one point how often were -- what was the most frequent
3 you were seeing him?

4 A Well, it varies from once a week for an hour to twice a week
5 for an hour, and there's oftentimes communication in between if he is
6 triggered by something or if he's not feeling okay, he might reach out
7 and seek maybe an earlier appointment.

8 Q Okay. Do you know how much you've billed him for the
9 work that you've performed?

10 A No, I don't have the total of that.

11 Q Okay.

12 A But I know how many sessions we've had.

13 Q Okay. How many sessions have you had?

14 A We've had 89 sessions.

15 Q Okay. And what's the cost per session?

16 A \$90 with the exception of the initial evaluation which is 150.

17 Q Okay. So one initial evaluation at 150; is it 89 more or 88
18 more at \$90?

19 A Wait, I'm sorry?

20 Q Was it a total of 89 including the initial evaluation or the
21 initial evaluate --

22 A No, the initial evaluation for that first session was \$150, and
23 then, I'm sorry, then the -- the 89 sessions are at 90.

24 Q Okay.

25 A Sorry, I misunderstood.

1 Q And we can calculate that and figure out how much you
2 charged.

3 A You want me to calculate that?

4 Q That's okay, we can calculate it.

5 A I can calculate it. It's just going to take me a second. I'm not
6 technologically savvy, and I had to do it on my phone. Okay. So \$8,160.

7 Q Are you still seeing Mr. James?

8 A Yes.

9 Q When was the last time you saw him?

10 A On the -- the 27th.

11 Q Okay. Last week?

12 A Uh-huh.

13 Q Okay. Is he getting better?

14 A Intermittently.

15 Q Okay. The fact that he has this PTSD, does that affect his
16 ability to cope with other stressors?

17 A Yes.

18 Q Okay. You're aware of his wife's situation?

19 A Yes.

20 Q Okay. And what is that?

21 A That she is battling cancer.

22 Q Okay. How does the fact that he has PTSD affect his ability to
23 deal with the stress of his wife's cancer?

24 MR. A. GIOVANNIELLO: I'll object, Your Honor. It's
25 irrelevant, also prejudicial.

1 THE COURT: Response?

2 MR. KUDLER: It goes to how it effects his life. It goes to --
3 directly to his pain and suffering.

4 THE COURT: Overruled.

5 MR. KUDLER: Thank you, Your Honor.

6 BY MR. KUDLER:

7 Q Go ahead.

8 A Oh, okay. I'm sorry, can you repeat the question?

9 Q Sure. The fact that he has PTSD, how does that affect his
10 ability to cope with his wife's battling cancer?

11 A Okay. So, well, that makes it very difficult because he's
12 already utilizing one of his -- a mission to deal with the symptoms of his
13 PTSD, like the hypervigilance and the lack of sleep and things of that
14 nature, so it makes it very difficult for him to manage all of that, and
15 yeah, that's -- I would just say it's very -- it's extremely difficult.

16 Q Okay. How about managing any financial strains that he's
17 going through or has gone through; how does the PTSD affect that?

18 A I would say that managing pretty much anything that is
19 stressful or requires a lot of thought would be relatively difficult,
20 especially if it's something that would trigger the PTSD symptoms,
21 because he's in a constant state of, like, having, like, arousal and -- and
22 the fight or flight.

23 Q Do you have an opinion as to how PTSD will affect him being
24 here at trial today, just today?

25 MR. A. GIOVANNIELLO: Objection, Your Honor.

1 THE COURT: Sustained.

2 MR. KUDLER: Thank you, Your Honor.

3 THE WITNESS: I can answer that one?

4 MR. KUDLER: No.

5 THE WITNESS: Oh.

6 BY MR. KUDLER:

7 Q Is PTSD something that is always diagnosed immediately
8 after an event?

9 A No.

10 Q Okay. Is it unusual for there to be a delayed onset?

11 A No.

12 Q Okay. Is it unusual for somebody to not know they have
13 PTSD when they, in fact, have it?

14 A Yes, it happens quite frequently, actually.

15 Q Okay. So it's the norm that somebody may have PTSD, it's
16 just not diagnosed yet?

17 A Can you repeat that? I'm sorry.

18 Q It's not unusual that somebody actually has PTSD, it just
19 hasn't been diagnosed?

20 A No, that's not unusual, no.

21 Q Okay. In this days, are you surprised that Mr. James went
22 undiagnosed for five years?

23 A No.

24 Q Okay. And why not?

25 A Typically, people don't know the symptoms, and typically,

1 people don't want to talk about the symptoms that makes them feel
2 shame and fearful and so there's a -- predominantly males, they don't
3 realize that what they're experiencing is symptoms of PTSD.

4 Q Okay. Are the opinions that you've given here today within a
5 reasonable degree of psychiatric or psychological probability? In other
6 words, are the opinions you've given here today more likely than not to
7 be true?

8 A Yes, yes.

9 Q Okay.

10 MR. KUDLER: Your Honor, that's all I have at the moment.

11 THE COURT: All right. Pass the witness. Cross examination.

12 MR. A. GIOVANNIELLO: Thank you. I'm not sure where I'm
13 looking. Over there?

14 MR. KUDLER: She can't see you; I don't think.

15 MR. A. GIOVANNIELLO: Oh, she can't see me?

16 Can you see me?

17 THE WITNESS: I can see you sometimes.

18 MR. KUDLER: If you go to the podium she can see you.

19 MR. A. GIOVANNIELLO: I don't want to go to the podium.

20 CROSS-EXAMINATION

21 BY MR. A. GIOVANNIELLO:

22 Q Can you see me now?

23 A Yes.

24 Q Okay. Ms. Coombs, have you had an opportunity to review
25 any of the medical records of Mr. James?

1 A Have I had an opportunity to view any medical records?

2 Q Yeah. Yes.

3 A He's shared a couple with me throughout the two years.

4 Q Throughout the two years that -- so what has you shared
5 with you? What medical records has he shared with you?

6 A I'm not -- I'm not sure I -- I'd have to look through everything.
7 I'm not quite sure.

8 Q Have you ever seen in the medical records that he gave you,
9 and you're not -- well, you're not sure what they are, right? You don't
10 know where they came from?

11 A I'm sorry?

12 Q The medical records that he gave you; do you know where
13 they came from? In other words, what healthcare provider were they
14 from?

15 A I -- I don't know. I would have to look through my stuff. I can
16 look. Let me see. I'm sorry I didn't -- I didn't know I would need those.
17 I'm sorry. I know they're -- it's from a while ago. I might have had
18 something maybe from Dr. Craig. I'm not sure.

19 Q Dr. Craig is the referring physician?

20 A Yes.

21 Q Okay. Do you have anything before Dr. Craig, like from 2014,
22 '15, and '16?

23 A Oh, I don't -- I don't think I do.

24 Q Okay. So you have not reviewed then any of those medical
25 records, any prior medical records, right?

1 A I don't think so.

2 Q Okay. So in coming to your opinions in this case, first of all,
3 let me ask you something; have you ever served as an expert witness?

4 A No.

5 Q Do you know what I mean by that?

6 A Yes.

7 Q Okay. Basically, you're just a clinician, but I mean -- I don't
8 want to say just a clinician, but you know what I mean, you're a clinician.
9 In other words, you just see patients.

10 A Yes.

11 Q Okay. Is this the first time you're ever testifying in court?

12 A No.

13 Q How many times have you done that?

14 A Maybe a handful of times.

15 Q Okay. And it's always for the patient, correct?

16 A Yes.

17 Q Okay. Have you ever testified in court for a defendant?

18 A I don't -- I don't believe I have.

19 Q Okay.

20 A I'm try -- I'm sorry. I'm trying to think. I know I had a lot of
21 DCFS cases. I don't believe so.

22 Q DCFS; what's that?

23 A Oh, I'm sorry. Department of Child and Family Services.

24 Q Okay. In your practice do you rely on the witness to be
25 truthful when they talk to you about any of their issues?

1 A How do you mean do I rely on that? Like --

2 Q Well, you have to --

3 A Do I assume that everybody's honest?

4 Q Yeah.

5 A No.

6 Q Okay. How do you divine whether someone's telling you the
7 truth, or someone is not, who is fibbing, lying to you?

8 A Because I ask certain questions that would elicit certain types
9 of responses and typically somebody's asked -- well, okay. So
10 somebody who's trying to look a certain kind of way has a certain
11 pattern of behaviors, and they usually over -- I guess they -- they would
12 speak a lot more than they needed to about trying to convince me of
13 their symptoms or their experiences.

14 Q And what was your experience with Mr. James?

15 A My experience with him as far as if he was being truthful?

16 Q Yeah, let's look at the first -- yeah, let's look at the initial
17 evaluation, because you've seen him 89 times after that.

18 A Yes.

19 Q So how about the initial examination first?

20 A Okay. And I'm sorry, what would you like for me to say
21 about the initial examination?

22 Q Whether or not you were able to see whether he was being
23 truthful with you?

24 A Yes.

25 Q Okay.

1 A I -- I feel like I have -- I feel like I could tell that he is being
2 truthful with me.

3 Q Okay. So --

4 A Because he seems -- oh, I'm sorry.

5 Q Go ahead. I think I cut you off and I didn't mean to. Bad
6 habit of mine.

7 A Oh, he seemed very truthful. His experience was very
8 difficult for him to talk about.

9 Q Okay. Did you know whether or not he ever expressed any
10 of those feelings to any of his prior treating physicians?

11 A If -- do I know if he expressed any of those feelings to his
12 prior physicians?

13 Q Yeah. Like what you used to -- what you used to essentially,
14 to come to your opinion that he has PTSD?

15 A Well, I know that he spoke with Dr. Craig.

16 Q Other than Dr. Craig; anything before Dr. Craig?

17 A That I know of? I'm -- I'm not -- I'm not sure.

18 Q Okay. Does it take five years for PTSD to manifest itself, or
19 six years I would say?

20 A Five --

21 Q Does it take six years?

22 A Six years?

23 Q Yeah.

24 A Actually, it could.

25 Q Okay. Is that usual or unusual?

1 A No, it's not that it would take that long to manifest itself, it's
2 the -- it was probably always there but nobody recognized it.

3 Q Okay. But if it was always there and nobody recognized it,
4 doesn't the patient have to at least give some indication of --

5 A Uh-huh.

6 Q -- the symptomology that they're feeling?

7 A Yeah. They do, typically, but if they're not speaking about
8 the symptoms that are inside their head, then I think it's kind of difficult
9 for other people, but I mean it's evidence by irritability, shorter fuse,
10 hypervigilance, like all of those things, you -- they're there, but maybe
11 they're just not talked about or maybe it's explained away with
12 something else.

13 Q Let me ask you this --

14 A Like, oh, I've had a bad week, or oh, I'm just stressed about
15 this, or --

16 Q Okay. Let me ask you this, if someone is just irritable, do you
17 they have PTSD just because they're irritable?

18 A No.

19 Q Okay. Somebody has anxiety, do they have PTSD just
20 because they have anxiety?

21 A No.

22 Q Okay. Because there's irritable people in this world and
23 there's people that have anxiety in this world, right?

24 A Correct.

25 Q And they don't have PTSD?

1 A They could.

2 Q Okay.

3 A I mean, they -- there are co-occurring disorders, but, I mean, I
4 wouldn't -- I wouldn't know. Did they experience, like a traumatic event,
5 maybe?

6 Q Why don't you tell me?

7 A Well, Mr. James did. Is that the question? I'm not sure. I'm
8 confused.

9 Q Now Mr. James experienced an event in 2014, and I guess
10 what I'm asking you, is what I'm trying to get to, what I'm trying to get at
11 is does it take six years for PTSD to manifest itself from that traumatic
12 event?

13 MR. KUDLER: Asked and answered, Your Honor.

14 THE COURT: Sustained.

15 MR. A. GIOVANNIELLO: You're right.

16 BY MR. A. GIOVANNIELLO:

17 Q That question's asked and answered. You don't have to
18 worry about it.

19 A Okay.

20 Q Okay.

21 A I -- I was -- I'm -- okay, that's fine.

22 Q Have you seen Mr. -- I'm sorry, I forgot his name -- Mr.
23 James? Have you seen Mr. James in person?

24 A No, I have not.

25 Q So your 89 visits -- well, your initial evaluation of him was

1 also by Zoom?

2 A Yes, correct.

3 Q And your 89 visits have all been Zoom visits?

4 A Well, essentially, Zoom, it's through Simple Practice, so yes.

5 Q Okay. I'm sorry.

6 A Video, yeah.

7 Q Can I just say video then?

8 A Yes.

9 Q Okay. So you've had 89 and plus the initial, all video of Mr.

10 James, correct?

11 A Correct.

12 Q Is it -- an in-person examination preferable to than video

13 examination?

14 A Not during a pandemic.

15 Q Pandemic's over, sort of. How about then?

16 A Well, I have -- I have six year old twins with respiratory

17 issues, so I'd rather not risk it.

18 Q Okay. Do you know whether or not Mr. James has had a

19 sleep study?

20 A A sleep study.

21 Q Yeah. Is that something you would recommend for someone

22 having nightmares?

23 A I wouldn't recommend a sleep study at all because that's not

24 my -- within my scope.

25 Q Okay. All right. Thanks.

1 MR. A. GIOVANNIELLO: I have no further questions.

2 THE COURT: Redirect?

3 MR. KUDLER: Thank you, Your Honor. Thank you. No, I
4 have nothing, Your Honor.

5 THE COURT: Oh, nothing else. I'm sorry.

6 Ladies and gentlemen from the jury, I see two hands up, two
7 questions pending. Parties approach.

8 [Sidebar begins at 4:12 p.m.]

9 THE COURT: And she's gone or she's still here?

10 MR. KUDLER: Hopefully, still there.

11 THE COURT: They're doing it exactly right. They're writing a
12 badge number, and they're doing great.

13 MR. KUDLER: Of her patient [indiscernible].

14 THE COURT: Within her scope.

15 MR. KUDLER: Yeah.

16 MR. A. GIOVANNIELLO: That's fine.

17 THE COURT: Would it be safe to say that any medical
18 [indiscernible].

19 MR. A. GIOVANNIELLO: Yeah, I'm okay with that.

20 THE COURT: And so --

21 MR. KUDLER: Sure.

22 MR. A. GIOVANNIELLO: -- if they agree.

23 THE COURT: Okay.

24 [Sidebar ends at 4:13 p.m.]

25 THE COURT: All right.

1 THE COURT RECORDER: Hold on, Your Honor. I just to get
2 her back on.

3 THE COURT: You're doing great.

4 THE COURT RECORDER: She's on.

5 THE COURT: All right. Ms. Coombs, as is practice currently
6 in my court jurors can pose questions to witnesses after completion of
7 examination by lawyers. I have two juror questions in front of me. It's
8 my intent to read these questions to you and give you an opportunity to
9 answer. Does that make sense?

10 THE WITNESS: Oh, yes. I'm sorry.

11 THE COURT: Good. What percentage of patients are
12 diagnosed with something other than PTSD, including no diagnosis?

13 THE WITNESS: That's a good question. So a lot of times
14 there's PTSD coupled with other things, and there's stand-alone PTSD,
15 and then as far as others, there's a little bit of an overlap that I would say
16 in my personal practice, be 50 percent.

17 THE COURT: Okay. Would it be safe to say that any
18 traumatic event can cause PTSD, i.e. car accident, slip and fall, cut finger,
19 etcetera, question mark? Is it true that some sort of PTSD is very
20 common with most accidents?

21 THE WITNESS: I would say that that is very possible.

22 THE COURT: Okay.

23 THE WITNESS: Depending on -- oh, I'm sorry. Depending on
24 the -- the person experiencing it. I think everybody's different, so it
25 would just depend on the person and the experience.

1 THE COURT: Any additional questions from the jury as a
2 consequence to these two questions asked and answered now? I have a
3 follow-up, two follow-up. I'll give you a chance to compose your note.

4 [Pause]

5 THE COURT: Parties approach?

6 [Sidebar begins at 4:16 p.m.]

7 THE COURT: Thank you.

8 MR. A. GIOVANNIELLO: That's what we've been objecting
9 to, right?

10 MR. KUDLER: It's different than the -- anything that plaintiff
11 did wrong, it's just the fact that he has to --

12 THE COURT: All right. It's too close to the one in terms of
13 the -- based upon a narrative here, so I'm going to -- I'm not going to go
14 there. Specifically in her practice, what percentage are not diagnosed
15 with PTSD, and never seen again?

16 MR. KUDLER: That'd be fine.

17 THE COURT: Okay.

18 MR. A. GIOVANNIELLO: It's fine with me.

19 THE COURT: Okay. All right.

20 MR. KUDLER: Thank you.

21 [Sidebar ends at 4:17 p.m.]

22 THE COURT: Ms. Coombs, can you hear me?

23 THE WITNESS: Yes.

24 THE COURT: Next question. Specifically in your practice,
25 what percent are not diagnosed with PTSD and never seen again?

1 THE WITNESS: As in I see maybe one, one time and don't
2 diagnose them?

3 THE COURT: I can only read the question as styled. I can't
4 elaborate.

5 THE WITNESS: Okay. Could you repeat it, please?

6 THE COURT: Sure.

7 THE WITNESS: Thank you.

8 THE COURT: Specifically in your practice, what percent are
9 not diagnosed with PTSD and never seen again?

10 THE WITNESS: And never seen again?

11 THE COURT: And never seen again.

12 THE WITNESS: Maybe -- that's very rare. I would say maybe
13 -- maybe five percent. They may be diagnosed with other things, and
14 continue to see me for other things, but people that don't come back, I
15 would say maybe five percent, and there's also a difference between
16 people that are mandated to seek therapy, and people that voluntarily
17 seek therapy, as well, so the motivation might be a little bit different
18 there.

19 THE COURT: All right. Any additional questions from the
20 jury as a consequence to questions asked and answered? Seeing no
21 hands.

22 Plaintiff, you have opportunity to follow-up jury questions.

23 MR. KUDLER: No thank you, Your Honor.

24 THE COURT: Defense?

25 MR. A. GIOVANNIELLO: No thank you, Your Honor.

1 THE COURT: Ms. Coombs, thank you for your testimony.
2 You're excused.

3 THE WITNESS: Thank you.

4 THE COURT: Plaintiff, call your next witness. Actually,
5 approach. We're getting --

6 MR. KUDLER: Yeah.

7 THE COURT: -- close to the break.

8 [Sidebar begins at 4:19 p.m.]

9 THE COURT: You said you were heading towards client. It
10 might be better to start that tomorrow.

11 MR. KUDLER: Yeah, and just so the Court and --

12 MR. A. GIOVANNIELLO: I'm okay with that.

13 MR. KUDLER: -- and defense can prepare, tomorrow
14 morning will be Cipollini, Sheryl Cipollini, she was Dr. Craig's assistant,
15 and she's not [indiscernible].

16 MR. A. GIOVANNIELLO: Yeah, yeah.

17 MR. KUDLER: Right. And then Dr. Richter and Dr. Patti.

18 MR. A. GIOVANNIELLO: Okay.

19 MR. KUDLER: And then the plaintiffs will be up, as well.

20 MR. A. GIOVANNIELLO: [Indiscernible]

21 THE COURT: [Indiscernible]

22 MR. A. GIOVANNIELLO: What's that?

23 MR. KUDLER: You're just repeating it?

24 MR. A. GIOVANNIELLO: I'm just repeating it.

25 MR. KUDLER: Yeah, I just want to make sure to take --

1 THE COURT: Okay.

2 MR. A. GIOVANNIELLO: Cippolini.

3 THE COURT: Fair enough. As long as you two are on the
4 same sheet and use it, I'm good.

5 MR. KUDLER: I don't want to --

6 THE COURT: I want to speak before we go home. I want to
7 break, build a record vetted on my denial than this document for
8 Coombs, because we were sidebar and that sometimes doesn't pick up.

9 MR. KUDLER: I never -- I never offered it.

10 THE COURT: Oh, then we don't need to.

11 MR. KUDLER: Yeah, so.

12 THE COURT: Perfect. All right.

13 [Sidebar begins at 4:20 p.m.]

14 THE COURT: Ladies and gentlemen? Thank you.

15 At this point I think it's wise for us to take a break, take our
16 evening recess, not a break. I also would admonish you as I've
17 encouraged and outlined for you, your participation by way of notes is if
18 you feel it necessary, I encourage you to do that. If you have, just
19 remember, don't give your question any additional weight simply
20 because it's a question you've asked, or hold it against either side as a
21 consequence of decision of the Court not to ask the question.

22 Your evening recess admonition is as follows. During this
23 recess you must not discuss or communicate with any fellow juror in any
24 way regarding the case or its merits, either by voice, phone, email, text,
25 or internet, by any other means of communication or social media.

1 You may not read, watch, listen to any news reports or
2 commentary about the case. Do not do any research, consult
3 dictionaries, internet, or use reference materials, make no investigation,
4 test any theory of the case, recreate any aspect of the case, or in any way
5 investigate the case, or learn about the case on your own. Do not form
6 or express any opinion regarding the case until it's finally submitted to
7 you.

8 Now I'm not sure that I mentioned it to the jury, but we have
9 nothing in our way tomorrow, so I'd like to bring us back to work at 9
10 a.m. You won't be waiting in the hall. Everybody should be in their
11 place, and we can move forward in the action, and that would be my
12 intention as well on Friday, so Plaintiffs' schedules accordingly so we can
13 keep moving forward in the effort.

14 Ladies and gentlemen, have a good evening. Follow the
15 marshal, please.

16 THE MARSHAL: Please rise for the jury. Leave your
17 notebooks on your seats, please.

18 [Jury out at 4:22 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: The record should reflect we're outside the
21 presence of the jury. Any additional record need to be made by either
22 side as a function of witness examination this afternoon? Plaintiff?

23 MR. KUDLER: No thank you, Your Honor.

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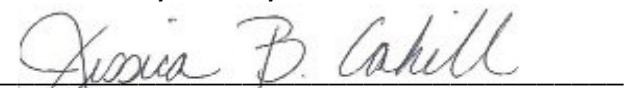
THE COURT: Defense?

MR. A. GIOVANNIELLO: No, Your Honor.

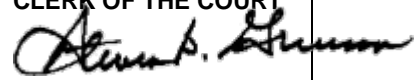
THE COURT: Thank you. We'll see you tomorrow morning a little before nine.

[Proceedings adjourned at 4:22 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JEFFREY MYERS, ET AL.,

8 Plaintiffs,

9 vs.

10 THI OF NEVADA AT CHEYENNE,
11 LLC, ET AL.,

12 Defendants.

) CASE#: A-16-735550-C

) DEPT. XVII

13 BEFORE THE HONORABLE DAVID BARKER
14 DISTRICT COURT JUDGE
15 WEDNESDAY, JUNE 1, 2022

16 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 2**
17 **TESTIMONY OF DONALD GIFFORD**

18 APPEARANCES

19 For the Plaintiffs: DONALD C. KUDLER, ESQ.

20 For the Defendants: ALEXANDER F. GIOVANNIELLO, ESQ.
21 CHRISTOPHER J. GIOVANNIELLO, ESQ.

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25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

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1 Las Vegas, Nevada, Wednesday, June 1, 2022

2

3 [Designation of the record begins at 11:10 a.m.]

4 THE MARSHAL: Stand right there. Please remain standing,

5 raise your right hand, face the clerk to be sworn in, please.

6 DON L. GIFFORD, PLAINTIFFS' WITNESS, SWORN

7 THE CLERK: Please be seated.

8 Please state and spell your first and last name for the record.

9 THE WITNESS: My name is Don L. Gifford, G-I-F-F-O-R-D.

10 Just the letter L.

11 THE COURT: Let's get the headphones for our Juror Number

12 1, please.

13 [Counsel confer]

14 THE COURT: Go ahead.

15 MR. A. GIOVANNIELLO: What exhibit, counsel?

16 MR. KUDLER: 40.

17 MR. A. GIOVANNIELLO: 40?

18 THE COURT: Perfect. Test, test, test.

19 MR. A. GIOVANNIELLO: Exhibit 40.

20 THE COURT: Test, test, test.

21 MR. KUDLER: Your Honor, may I approach for the exhibit?

22 THE COURT: Yes.

23 [Pause]

24 THE COURT: Sir, can you hear? Test, test. Does that help?

25 UNIDENTIFIED SPEAKER: Yes.

1 THE COURT: Very good.

2 We are on direct examination of the witness.

3 Mr. Kudler, you have the floor.

4 MR. KUDLER: Now I have a mic.

5 THE COURT: Good.

6 DIRECT EXAMINATION

7 BY MR. KUDLER:

8 Q Could you state your name to the jury?

9 A I did. It's Don L. Gifford.

10 Q And, Don, let's talk about your background.

11 A Sure.

12 Q You work in the electrical field?

13 A Yes. I pretty much grew up in the electrical industry.

14 Q When did you start?

15 A Well, my dad was a contractor, and I started working for him
16 when I was a teenager.

17 Q Okay. More than ten years ago?

18 A Well, I learned electrical parts primarily in the -- in the
19 commercial realm and industrial realm, and to some degree residential
20 as well. And ultimately I went to college and got a degree. Not -- not in
21 installation of electrical systems. But after I graduated, I became a
22 master electrician, and ultimately I obtained electrical contracting
23 licenses in the state of Wisconsin and ultimately in Nevada, California,
24 and Arizona as well. So I've been involved in the electrical trade most of
25 all of my life. I went to the School of -- the School of Electricity in

1 Minnesota in the late 1970s as part of my journey of education. And I
2 have an undergraduate degree and I have a master's degree.

3 Q Okay. An undergraduate degree in what?

4 A My undergraduate degree is in business. And my master's
5 degree an MBA, but it's focused on economics and finance.

6 Q Okay. So in addition to being an electrician, you also dealt
7 with the business end?

8 A Definitely so. And then, finally, many years ago, I enrolled in
9 a direct doctoral program in general engineering, and I did all of my
10 coursework, and I was in the process of writing my dissertation. I didn't
11 complete that because life got in the way. So that's still in the works
12 perhaps sometime in the future.

13 Q How many years did you spend actually working as an
14 electrician approximately?

15 A Well, I would -- well, considering the fact that during the last
16 25 or 26 years I've been doing -- working as an expert witness in
17 forensics, a portion of that time I do some hands-on electrical work, no
18 question about that, and so prior to that I would say a couple of decades
19 at least of actually hands-on electrical work.

20 Q How many times have you been retained -- let's say per year
21 over the last five years, how many times have you been retained to
22 render opinions in regards to electrical issues?

23 A I'm going to guess with -- 100 times. In my career, I've been
24 retained over 1,300 times, and at least half of those have been with
25 respect to electrical issues.

1 Q Okay. So 6,700 times you've testified or been retained to
2 testify regarding electrical issues?

3 A Yes.

4 Q Okay. Have you ever been disqualified by a court to testify
5 regarding electrical issues?

6 A No, I've not been -- I've not been thrown off the stand.

7 Q What courtrooms -- or what jurisdictions have you testified
8 in?

9 A Clark County District Court, Los Angeles Superior Court,
10 Orange County, and I believe San Diego is the other one as well.

11 Q Okay. So the Southern Nevada, Southern California area?

12 A Yes, sir.

13 Q Okay.

14 MR. KUDLER: At this time I would ask that the Court
15 recognize Mr. Gifford as an expert in the field of electrical.

16 THE COURT: We don't do that anymore, Counsel.

17 MR. KUDLER: You don't do that anymore.

18 THE COURT: We don't do that, Mr. Kudler.

19 MR. KUDLER: Okay.

20 THE COURT: We listen to the evidence and wait for a
21 contemporary objection. I'm hearing none, let's move forward with the
22 witness.

23 MR. KUDLER: Thank you.

24 BY MR. KUDLER:

25 Q Do you recall when I contacted you in regards to this case?

1 That's your exhibit there, Exhibit number 40.

2 [Witness reviews document]

3 BY MR. KUDLER:

4 Q Approximately?

5 A I can do a little better than that. I'll give you a very close date
6 here. Just one second, please. It was on or about January 24th of 2019.

7 Q Okay. And what were you asked to do?

8 A Well, at the time, you contacted me and advised me that
9 there had been an electrical event involving Mr. Myers and Mr. James,
10 the Plaintiffs in this matter, and you wanted to retain my services with
11 regard to -- on behalf of them as Plaintiffs in the matter wherein they had
12 been working at College Park, a facility where an electrical event, the
13 explosion, had occurred. And asked me to do some conflict check, which
14 I did. And then asked me if I could render objectives, opinions in this
15 regard based upon certain minor information at that time.

16 Q Okay. What did you do in order to form your opinions?

17 A Well, I was provided documents pertaining to the actual
18 event, including photographs. You and I communicated. I had some
19 communications as well with one of the Plaintiffs. I was invited to go to
20 the property and look over the circumstances within the electrical room
21 itself where there's an electrical panel -- an electrical panel, let me just
22 clarify that a little bit, is an electrical piece of equipment that's several
23 feet wide, about seven feet tall, and a couple of feet deep. And this
24 particular panel was called MSA, which really is probably an acronym for
25 Main Service A.

1 So I looked at that, I looked at the transformer that was provided
2 by Nevada Power Company way back in time. Now NV Energy. And I
3 took some photographs, evaluated that information, and then I did
4 research with respect to applicable codes and standards, not only to the
5 electricians that were working there but also with regard to the standards
6 and codes that were applicable to College Park.

7 Q Okay. Did you open that box that day, that panel?

8 A I did not.

9 Q Why not?

10 A I had seen the interior of it. There was no evidence to show
11 that it had been changed. It had been compromised at the time of the
12 event that affected Mr. Myers and Mr. James. And I -- if I felt like I
13 needed to, I would have been uncomfortable in doing so without
14 significant gear in place in order to do so.

15 Q Okay. Do you recall a second event taking place after the
16 event with Mr. James and Mr. Myers?

17 A I was advised that there was a second event. And, in fact,
18 one of the gentlemen that was in the room with us, Mr. Comstock,
19 testified in deposition that there was a second event involving Helix
20 Electric employees.

21 Q Okay. And that second event was another either arc flash or
22 some kind of a short?

23 A Yes, it was. The evidence I saw indicated underscored that.

24 Q Okay. And by evidence, was that some materials from that
25 event, that second event?

1 A Some materials and photographs, and then, of course,
2 Mr. Comstock's deposition testimony.

3 Q That second event is completely separate from our event?

4 A Yes. I see those as completely separate events.

5 Q Okay. The fact that there was a second event, what does that
6 tell you about whether the power was on or off to that box?

7 A The power retained on in the box.

8 Q Okay.

9 A In order for there to be such an event, which really is a
10 matter of a ground fault or a phase-to-phase fault resulting in an
11 explosion, which really is called an arc flash, the power has to be on for
12 that to happen.

13 Q Okay. So your conclusion from what you heard is that there
14 was a second time the box was being worked on while it was energized?

15 A Yes, sir.

16 Q Okay. Did you talk to Mr. James about what equipment he
17 was wearing to protect himself --

18 A Yes, I did.

19 Q -- or they were wearing? And what's your understanding of
20 the equipment they were wearing?

21 A Well, in reviewing the documentations, it would appear that
22 they had on at least a 4 calorie suit, which would give them protection
23 for up to a Category 1. And the thing that dictates Category 1 would be
24 the National Standards, NFPA, National Fire Protection Association.
25 Probably just a book called *70E*, which is Electrical Safety in the

1 Workplace. And the gear they had on, the protective gear was
2 equivalent to what was required for this particular application.

3 Q Okay. Category 1 is the lowest category there is?

4 A Well, no. There's a Category 0.

5 Q Okay.

6 A In which case it's either not energized or a person is not
7 opening any exposed electrical wiring.

8 Q Category 1, what's the amount of power that's running
9 through a system?

10 A Category 1 normally would be 240 volts or less.

11 Q Okay. And your understanding and your information is that
12 this was a Category 1 piece of equipment?

13 A Yes. As a matter of fact, this particular MSA that we've
14 talked about a minute ago is actually a 208/120 3-phase electrical panel.
15 So the greatest voltage to ground under normal conditions would be 120
16 volts, which we use to plug in our radios, and 208 volts, which we use to
17 power air conditioners and other type of equipment.

18 Q Okay. Similar to the power you would have at home?

19 A Well, rather similar. Normally at home we have 240/120. In a
20 commercial facility, such as this, it's 208/120 for technical reasons.

21 Q Okay. So you went in the room, you looked from outside,
22 you looked at photographs, you spoke to Mr. Comstock, you spoke to
23 one of the clients -- one of my clients. Did that give you enough
24 information to form any opinions about this case?

25 A Well, that provided me a very good basis. So then based

1 upon my review and documents, which I was normally familiar with, but
2 nonetheless, I go back in the code books, go into OSHA standards and
3 the National Electrical Safety document I talked about a few moments
4 ago, which is 70E, and with that information, I was very much
5 empowered to form opinions in this matter.

6 Q Okay. Which section of OSHA did you look at?

7 A I was focused on OSHA number 1926. Let me verify that.

8 Q And that's on page 5 of 14, Bates stamped, which is the
9 stamp on the bottom right-hand corner, 1584 in Exhibit 40?

10 A That's exactly right. At the top of the page it makes
11 references to two OSHA under 29 CFR. One of those is 1926.20(b)(1) and
12 the other is 1926.404(b)(1)(iii)(E).

13 Q In your opinion, were either of those statutes violated here?

14 A Very much so.

15 Q By whom?

16 A They were violated by College Park.

17 Q And how?

18 A Well, looking under the language particularly of 1926.404, it
19 says, "Wiring design and protection, all required tests shall be
20 performed." Under 1926.404(b)(1)(iii)(E)(2), "Before equipment is
21 returned to service following any repairs." And then under 1926.20(b)(1),
22 "Accident prevention responsibilities: It shall be the responsibility of the
23 employer to initiate and maintain such programs as may be necessary to
24 comply with this part." And OSHA, part 1926 addresses in greater detail
25 those things that are required in order to comply.

1 Q What's your understanding of how the arc flash occurred?

2 A Based on my -- based on communications and evidence --
3 the electrical panel has three covers on it. There's two side panels
4 vertical. It's very common in the electrical industry in commercial and
5 industrial applications for those to be on to provide protection over the
6 location where the wires come up and go to a circuit breaker. On the
7 left- and right-hand side of panel MSA, there are such panels. Cover
8 panels. Another term in the electrical trade we typically use is called a
9 dead front. Literally an electrical term that I've heard for decades,
10 meaning that it's something there to protect life and limb. Then in the
11 middle there's another electrical section that covers over the bodies of
12 the circuit breakers themselves.

13 Mr. Myers and Mr. James, the Plaintiffs, removed those covers so
14 that they could gain access to one of circuit breakers for -- it's my
15 understanding for the kitchen. Their assignment was to remove the
16 circuit breaker and replace it with a new one. They were also advised by
17 personnel of College Park that it was critical that they do so with the
18 power energized, which is understandable in a healthcare facility. We
19 have to consider whether or not it is feasible and suitable to work on
20 something live in the interest of protection -- protecting the greater good.

21 So these gentlemen there had this opened up. They started to do
22 the work. And in the top of electrical panel there was a piece of -- it's a
23 very thin charcoal-colored -- in more modern times, it's phenolic or
24 plastic. In those days, it kind of reminds me of a very thin fibrous
25 material, but it may be plastic as well. This material up in the top of the

1 panel is very flexible and it's prone to vibration.

2 So what the Plaintiffs did not know is that somebody had left some
3 screws up in the top. These screws were more than one inch long, they
4 were about one-quarter of an inch in diameter, and at least one of those
5 fell down. My understanding is more than one fell. But one of those
6 came down and landed between two of the fingers that were designed to
7 contact the electrical circuit breaker that they were going to remove and
8 reinstall. And when it did that, it allowed for electrical current to flow
9 from one electrical phase, let's call it in this case, B, to phase C.

10 And when that happened, two things are supposed to happen.
11 One is just a natural outgrowth of the laws of physics; there is going to
12 be some kind of an arcing event, and it may be a large explosion or a
13 small explosion. The second thing that can happen in the event where
14 the circuit breaker protecting that particular layout is not functioning
15 properly, it's really important -- just like the brakes on your car, when
16 you're going 70 and somebody pulls in front of you going 30 and you hit
17 the brakes, you want to be able to stop immediately.

18 Just like that, a circuit breaker controlling the electrical wiring in
19 this panel, when that arc occurred, the circuit breaker is supposed to trip
20 almost instantaneously. It should trip within just a very tiny fraction of a
21 second. In this particular instance, that circuit breaker did that trip for
22 several seconds.

23 And what happens with an arc flash kind of reminds me a
24 little bit of what we -- what we see with lightning, it grows and builds
25 into something that is very big. They call it a plasmic [phonetic] ball.

1 And that plasmic ball can get up to temperatures as high as 35,000
2 degrees. So all the metallic parts that are within that region are likely
3 going to be ejected or evaporated. And the other interesting thing is that
4 the air within that ball actually becomes ionized. And, as a consequence,
5 the ball then will ultimately extinguish itself, which it did, but not before
6 it created great damage to the Plaintiffs physically and damage to the
7 gear -- to the switchgear.

8 Q So after this, that switchgear was damaged as a result of this
9 event?

10 A Absolutely. I saw evidence that one of the fingers was blown
11 off. But the other thing that happens when an electrical piece of gear,
12 particularly one that's been around for a long time, has gone through an
13 event like that, the electrical panel itself is compromised and the circuit
14 breaker feeding that particular circuit is compromised. And they have to
15 be changed out. And the code that dictates is the National Electrical
16 Code.

17 Under Articles 110.3 and 110.12, but Article 3 says that use of a
18 piece of equipment has to be in compliance with the manufacturer's
19 instructions or recommendations. The manufacturer is not going to
20 stand by a circuit breaker that has failed or an electrical panel now that's
21 been compromised by this tremendous plasmic arc ball that occurred.

22 Q Given what you reviewed in preparing your report, do you
23 have an opinion as to whether or not Mr. James and Mr. Myers did
24 anything wrong that night?

25 A Not in my opinion. When I first got involved in this case --

1 because I like to be objective -- I considered whether or not they had
2 done things that were inappropriate. One of my first concerns is that
3 they had not suited themselves up in the proper gear. I learned rather
4 early on that they had actually been suited up. If they hadn't, in fact,
5 they may not be here.

6 The other thing I was concerned about is why were you guys
7 working on the electrical gear energized? A piece of electrical gear rated
8 at 240 volts and below, you can work on it energized. The people doing
9 it have to be qualified. These were requested electricians. And,
10 furthermore, the work they were doing was an essential part of replacing
11 this without shutting down MSA and shutting down a medical facility.

12 And based on those things and based of my understanding of
13 Mr. James' clear understanding of how electricity works and why, I'm
14 satisfied that the gentlemen had the expertise needed in order to do the
15 work. And, in fact, they had gotten a permit, a hot work permit from
16 College Park to do that work. At least that's my understanding.

17 Q Do you have any other opinions in regards to this case?

18 A Well, yes. College Park has an obligation, just like any
19 operator of a -- of a commercial facility, in any jurisdiction where they
20 adopt, and therefore enforce the national -- National Electrical Code.
21 And where we have Nevada statutes, College Park is required to
22 maintain the electrical gear to provide for a safe working
23 environment for their own employees, and therefore for other people
24 who may be in the property. And they failed to do that.

25 And I am also critical, based on it is my understanding, and

1 certainly it was my understanding on the date of my inspection of the
2 property at least two years ago, that the circuit breaker that had tripped
3 had never been replaced and the MSA had never been replaced. I'm
4 critical of that.

5 Q Okay. Do you have any evidence that prior to this incident,
6 let's say in the seven years, that anybody had ever done any
7 maintenance on this equipment?

8 A Well, I don't know exactly. Based on Mr. Comstock's
9 deposition, he had indicated that, no, nobody had been in there at least
10 for four years. There's a little question about his deposition. It may be
11 four, it may be seven or more years. But based on the fact that there
12 were parts sitting on top of that material, the parts that actually fell,
13 those are not something that are part of the original installation of the
14 equipment.

15 Furthermore, in the event where College Park was doing the
16 appropriate job of inspecting and maintaining their equipment, that sort
17 of thing could have, would have in all likelihood been discovered prior to
18 having somebody go into the gear live.

19 Q Okay. Thank you for your time.

20 MR. KUDLER: That's all I have for now.

21 THE COURT: The witness is passed?

22 MR. KUDLER: Yes.

23 THE COURT: Cross -examination.

24 MR. A. GIOVANNIELLO: Can I use this thing?

25 THE CLERK: Yes.

1 THE COURT: You can use whatever technology we have if --

2 MR. A. GIOVANNIELLO: This goes right up there, right?

3 THE CLERK: Yeah.

4 THE COURT: It should.

5 THE CLERK: You need to turn the BlueJeans on.

6 MR. A. GIOVANNIELLO: I am really technologically

7 challenged, so --

8 THE CLERK: Well, you're [indiscernible].

9 [Counsel confer]

10 MR. A. GIOVANN: You're going to get yourself some water?

11 THE WITNESS: Yes, sir. If there's any way I could get a

12 cup --

13 MR. A. GIOVANNIELLO: Oh.

14 THE WITNESS: -- for some water, that would be great.

15 Thank you.

16 MR. A. GIOVANNIELLO: You're going to get better than a

17 cup.

18 THE WITNESS: Oh, okay. Very good. Thank you.

19 MR. A. GIOVANNIELLO: No rush. It's okay.

20 THE WITNESS: No. I'm good. Thank you.

21 MR. A. GIOVANNIELLO: All right.

22 CROSS-EXAMINATION

23 BY MR. A. GIOVANNIELLO:

24 Q So, Mr. Gifford, obviously you're a well-qualified electrician,

25 correct?

1 A I feel like I am, yes.

2 Q Okay. Nothing to question your qualifications. How long
3 have you worked -- you're here as an expert witness, correct?

4 A Yes, sir.

5 Q You were retained by the Plaintiffs in this case, correct?

6 A That's correct.

7 Q What did they pay you? What was your retainer fee?

8 A I don't recall giving them a retainer.

9 Q Sure.

10 A I just billed for my time as I went along. There -- there may
11 have been. I just don't remember.

12 Q All right.

13 A Overall, I'll just tell you. Overall, I billed them for 12,000 --
14 \$12,000 in this matter.

15 Q Okay. So -- all right. So as of -- up to today, you've billed
16 \$12,000?

17 A Well, at least that.

18 Q Okay. Have you been paid?

19 A Yes.

20 Q Okay. You've been paid in full?

21 A Well, there's some invoices that are in the works.

22 Q Okay.

23 A Trial prep, for example.

24 Q Sure.

25 A But outside of that, yes, I've been paid.

1 Q And you're being paid to be here today, too, right?

2 A Yes. I'm paid for my time.

3 Q And it's just your time?

4 A That's correct. I'm paid for my time --

5 Q Okay.

6 A -- and paid for -- yeah, for my time to testify and provide

7 objective opinions.

8 Q Sure. And that's all we ask of you is to provide objective

9 opinions, right?

10 A Yes, sir.

11 Q Okay. Now, how much are you charging for today?

12 A My -- my fee for today gets billed at I believe \$425 an hour.

13 Q Okay. So that's how many hours you're here plus travel

14 time?

15 A Yes. The travel time I bill at a lesser rate.

16 Q Okay. So you have -- what's that rate?

17 A 240.

18 Q Okay. So 240 for travel time and, I'm sorry, you said 3 --

19 what did you say? 400 and something?

20 A 425.

21 Q 425 for actual testimony?

22 A And the travel time is minimum. I live in Las Vegas.

23 Q Oh, okay.

24 A I grew up here.

25 Q That's good. Born and raised here?

1 A Almost born here.

2 Q Wow. Okay.

3 Okay. Now, is your sole business working as an expert witness or
4 are you still doing electricity work?

5 A Principally what I do is testify in expert with regard to
6 electrical, fires, explosions, and other matters. That's mostly what I do. I
7 do get some hands -- my hands into things. And I have licensing to do
8 that if I -- if I so choose.

9 Q How many times do you actually get your hands into things?

10 A All the time.

11 Q Okay.

12 A I've got a -- I have a cabin that's out of state, I have friends who ask
13 me to give them a hand with what they're doing. And in terms of
14 obtaining permits and taking contracts to do work, I'm not doing much of
15 that.

16 Q Okay. That's what I was kind of getting at.

17 A No.

18 Q Okay. You don't do much of that anymore?

19 A I'm not doing much of that anymore.

20 Q How much of your time is spent as an expert witness?

21 A 95 percent --

22 Q About --

23 A -- at least.

24 Q -- 95 percent?

25 A Yes.

1 Q Okay. Now, how do you break -- do you -- breaking it down,
2 do you work more for the plaintiff or the defense or is it 50/50? Tell me
3 how that -- how that works.

4 A Over more than my 25 years, with respect to this type of case
5 and fires, electrical, lighting, other issues, just about 50/50.

6 Q Okay. Now, here, you were retained, it looks like, in 2019,
7 January of 2019?

8 A That's exactly right.

9 Q Okay. And you went inspected did the property and the area,
10 it looks like, on March 5, 2019? If you're wondering where that is, that's
11 on page 3 of your report.

12 A Thank you. Well, I tend to believe that. That sounds correct
13 to me.

14 Q I wouldn't lie to you.

15 A Right.

16 Q We'd both get in trouble for that.

17 [Witness reviews document]

18 BY MR. A. GIOVANNIELLO:

19 Q So essentially you went and inspected the property about
20 five years later?

21 A That's correct.

22 Q Okay. And do you know if anybody else worked on that
23 panel within that five-year period?

24 A I do not know.

25 Q Does it -- would it make a difference, in your opinion, if

1 someone else had worked on that panel in the previous five years?

2 A Between the time that this had occurred and the by the time I
3 got there?

4 Q Yeah. I should say yes. I said yeah.

5 A Given the scope of my assignment, I don't know that that
6 made much difference. I was just trying to ascertain whether or not --
7 well, first, I wanted to establish the character and nature of the
8 electrical --

9 Q Sure.

10 A -- panel MSA, I wanted to see whether or not it had been
11 changed out, and, in particular, I wanted to know if MSA had been
12 changed out. If that had been done, that would have made a difference
13 to me. But during the five years, if somebody had gotten in and out of
14 the panel, as far as I'm concerned, the only difference is if Mr. Comstock
15 had testified, yes, we've been in and maintained the panel, but he said,
16 "No."

17 Q Not in the previous five years.

18 A Oh.

19 Q I think Mr. Comstock said yes afterwards.

20 A Thanks for correcting me.

21 Q Yeah.

22 A You're exactly right.

23 Q Right.

24 A In fact, Helix went in -- was in the panel afterwards.

25 Q Afterwards --

1 A Uh-huh.

2 Q -- right. And in your direct examination, you talked about a
3 second event?

4 A Yes, sir.

5 Q Do you know what caused that second event?

6 A Based --

7 Q I believe you took pictures of it, too, in your report.

8 A Yes. Well, based on my experience, that looks to me like an
9 event where somebody was attempting to put a screw through the cover
10 to a cable that was very close to the front of the electrical panel.

11 Q Uh-huh.

12 A And so when they were inserting the screw in, it actually
13 drilled a hole from the insulation. And I'm -- I didn't observe it happen,
14 but based on my experience, based upon the view of this, that's exactly
15 what happened. And I've seen that happen --

16 Q Sure.

17 A -- many times in my lifetime.

18 Q And do you know whether or not the person who did that,
19 put that screw in there, was Industrial -- somebody from Industrial Light
20 and Power?

21 A I do not know that.

22 Q Okay. You were -- you -- as an expert, right, you're given
23 certain documents to give some -- you're given certain statements.
24 That's how you base your opinion, right?

25 A Well, my opinion is based upon a number of things.

1 Q Yeah. But as well as a lot of these statutes and regulations?
2 Which we're going to get into as well. But basically you're not there?
3 You weren't there? You didn't visual -- you didn't see this event, right?

4 A Correct, I wasn't there.

5 Q Exactly. So you have to rely on what is given to you in order
6 to -- it's almost like -- we call it forensic examination. In other words,
7 you're going backwards in time to look at all the documents to say,
8 "Okay, this is what I think happened, this is my professional opinion,"
9 right?

10 A Yes.

11 Q You have to do it that way, right?

12 A Yes.

13 Q Okay. So your opinion really is based upon, well, yes, the
14 records you reviewed -- the statutes you reviewed -- we'll talk about
15 them -- but it's also based upon the documents that you were actually
16 given and what was told to you about what happened, right? That's
17 what you have to base it on?

18 A That's true.

19 Q Right. And unless you know somebody's lying, you have no
20 reason not to believe them?

21 A Well that's true unless --

22 Q Right.

23 A -- it's -- unless it's contrary to my expertise and education
24 where electrical and mechanical systems are concerned.

25 Q Fair enough. So, here, Mr. James is the one who told you

1 what happened, right?

2 A Yes.

3 Q Okay. And you have to -- you believed him?

4 A Yes, I did.

5 Q No reason not to believe him, right?

6 A And the evidence underscored what he told me.

7 Q Okay. Now, I look a page 6 of your -- of your report, and here
8 it says the documents you reviewed.

9 MR. A. GIOVANNIELLO: Can I publish it so he can look at it?

10 THE COURT: Is it -- if the exhibit is in evidence, you may
11 publish. Has it been offered and admitted?

12 MR. KUDLER: It has not, Your Honor.

13 THE COURT: What is it?

14 MR. A. GIOVANNIELLO: It's his report.

15 THE COURT: Oh, is there -- are you offering it? Has it been
16 marked by the clerk?

17 MR. A. GIOVANNIELLO: No, it has not been marked by the
18 clerk and I think I'm not going to do that. What I'm going to do is just
19 read it.

20 THE COURT: Well, I'll let you examine the witness. But if it's
21 not in, it can't be published.

22 MR. A. GIOVANNIELLO: Gotcha, Your Honor. Understood.
23 Sorry about saying gotcha.

24 BY MR. A. GIOVANNIELLO:

25 Q Okay. You reviewed the amended -- just look at it. You

1 reviewed an amended complaint?

2 A True.

3 Q You reviewed American Medical Response dated 6/6 for
4 Jeffrey Myers?

5 A Yes.

6 Q MedicWest Ambulance for Andrew James?

7 A Yes.

8 Q You reviewed UMC records for both of them?

9 A Yes.

10 Q It looks like you reviewed a Southwest Electric Services
11 Power System Study [phonetic]. I don't know what that is. What -- what
12 is that for?

13 A Southwest Electric Tech Services [phonetic] is an
14 independent company who evaluates electrical systems. They may
15 evaluate other types of systems well -- as well and make
16 recommendations.

17 Q Sure.

18 A And they very often have the capability of them bringing
19 electrical equipment up to modern standards.

20 Q Okay. And was that just like a -- just for research?

21 A Well, it was provided to me by counsel, so I reviewed
22 everything that I had.

23 Q Oh, okay. You also reviewed, it looks like, photos taken by
24 Andrew James?

25 A Yes, sir.

1 Q And narratives prepared by Andrew James?

2 A Yes.

3 Q Photos of each Plaintiff provided by counsel?

4 A Yes.

5 Q College Park photos? I'm not exactly sure what that is. Did
6 you take those or were they provided by College Park?

7 A They were provided to me by counsel.

8 Q Okay.

9 A It's my understanding they were taken by people with
10 College Park.

11 Q Okay. And then a series of photos provided by counsel
12 depicting conditions at the interior of the subject panel, including photos
13 of an exemplar screw?

14 A Yes, sir.

15 Q Okay. You were not provided the work permit though, right?

16 A I have not seen the -- sir, are you referring to the permit that
17 was issued by College Park for working on the electrical equipment hot?

18 Q I don't believe it was issued by College Park. But we're going
19 to look at it right now. Take the black book behind, and it would be the --
20 the one that starts at 208 I believe.

21 A The one that starts at 208?

22 MR. A. GIOVANNIELLO: Your Honor, may I approach?

23 THE COURT: Yes.

24 THE WITNESS: And then parenthetically 1 to 107?

25 THE COURT: Counsel, if you want to -- if you want to follow

1 along. It's up to you.

2 MR. KUDLER: No, I'm fine. Thanks.

3 MR. A. GIOVANNIELLO: Yeah, that's it.

4 THE WITNESS: Okay.

5 MR. A. GIOVANNIELLO: Your Honor --

6 BY MR. A. GIOVANNIELLO:

7 Q Turn to Exhibit 239. Right at the end. This is a two-page
8 document.

9 A Okay.

10 Q Just let me know when you're there, Mr. Gifford.

11 A Yeah, I have it.

12 Q Oh, you have it?

13 A Sure. Sorry for the delay.

14 Q Okay.

15 MR. A. GIOVANNIELLO: This is --

16 BY MR. A. GIOVANNIELLO:

17 Q No, no problem.

18 MR. A. GIOVANNIELLO: This is Exhibit 239. I would like to
19 proffer into evidence.

20 THE COURT: 239 is offered. Any objection?

21 MR. KUDLER: No, Your Honor.

22 THE COURT: Hearing none, 239's admitted.

23 [Defendants' Exhibit 239 admitted into evidence]

24 BY MR. A. GIOVANNIELLO:

25 Q Okay. Now, 239 is an electrical -- it's an Energized Electrical

1 Work Permit, correct?

2 A Yes, it is.

3 Q Okay. And the top of that says Industrial Light and Power,
4 correct?

5 A Yes, it does.

6 Q So does that tell you that it was issued by Industrial Light
7 and Power and not by College Park?

8 A It says -- it says, "To be completed by the person requesting
9 the permit." So based on that, it looks like that was prepared by
10 Industrial Light and Power.

11 Q Okay.

12 A Okay.

13 Q Now, when you go down, look at, "Description of safe work
14 practices to be employed."

15 A Are we still on 239-1?

16 Q Yes, we are, sir.

17 A Okay. I'm there.

18 Q "Description of safe work practices to be employed," can you
19 read that for us?

20 A It says, "Crew member on watch during energized work
21 outside electrical room door, watch all clearances around energized bus,
22 use insulated tools where possible, and if required, safety glasses and
23 insulated gloves on at all times the energized panel is open."

24 Q And these are some of the safety procedures that have to be
25 followed by the electricians when they're working on an energized panel,

1 right, according to this work permit; is that correct, sir?

2 A According to this document, yes.

3 Q Okay. And one of the things that they're supposed to do is
4 watch all clearances around energized bus, right?

5 A "Watch all clearances around energized bus," yes.

6 Q Okay. And if you were to believe Mr. James, that a screw
7 came down and fell, obviously somebody didn't watch all clearances
8 around the bus; isn't that right?

9 A Well, actually, this was above their heads for the height.
10 And I guess we'd have to have a discussion about what it means to be
11 around the bus.

12 Q Well, you're the -- you're the expert here, you're the master --

13 A Okay.

14 Q -- you're the guy who knows everything about electricity.
15 Now, if we -- if you were working on an energized panel, and you know
16 that's a lot of electricity, you'll agree with me electricity is dangerous,
17 right?

18 A Yes, I do.

19 Q You'll agree with me that electricity could kill you?

20 A Yes, I do.

21 Q And a big arc that's supposed to be 35,000 degrees, which I
22 think is hotter than the sun, that -- that would melt anything in the room,
23 right?

24 A Yes, sir.

25 Q So you're going to check all clearances, aren't you?

1 A I'm going to do -- I'm going to carry out an observation of the
2 conditions there --

3 Q Sir --

4 A -- to --

5 Q -- will you answer my question?

6 MR. KUDLER: Your Honor, he was answering the question,
7 and he was --

8 THE COURT: Overruled. This is cross-examination. But the
9 witness is allowed to answer the question to his satisfaction. So,
10 Counsel.

11 MR. A. GIOVANNIELLO: Okay. Thank you, Your Honor.

12 BY MR. A. GIOVANNIELLO:

13 Q Go ahead. You can respond.

14 A The electricians then would be obligated to check for safe
15 conditions within the electrical panel. Is it possible for them to find every
16 single condition, particularly those things that were a condition that had
17 been created prior to them being there that was not within their line of
18 sight, so are they responsible for ascertaining and validating every
19 condition in electrical panel, well, that's questionable simply because we
20 have these safe practices, we have obligations on the part of a company
21 owner, such as College Park, to maintain their equipment to give access
22 to live gear. And so the electricians can some degree -- to a certain
23 degree can rely upon the viability of the company that's giving them
24 access to the panel.

25 Q And they should also watch all clearances around an

1 energized bus, right --

2 A That's the --

3 Q -- because that's what that says?

4 A That's the exact language.

5 Q That's what that says right there?

6 A Look for all clearances.

7 MR. KUDLER: Your Honor, could he not be argumentative
8 and let him answer without interruption?

9 THE COURT: Just state the objection. Don't speak. Don't --
10 no speaking objections, gentlemen. State your basis, and I'll rule.

11 So that was argumentative?

12 MR. KUDLER: Argumentative.

13 THE COURT: It's cross. Overruled.

14 MR. A. GIOVANNIELLO: Okay.

15 BY MR. A. GIOVANNIELLO:

16 Q Let's turn to page 2 of this document. Look at the very top --
17 mine's highlighted. Look at the very top right of this document.

18 A Yes, sir.

19 Q And it says, "Results of the arc flash risk," correct?

20 A Yes.

21 Q Okay. Now, isn't that saying that, at least up there, that there
22 is a risk of an arc flash when working on an energized panel?

23 A Yes, there is. However, under NFPA 70E, which is the
24 standard for Electrical Safety in the Workplace, these gentlemen were
25 working on a panel that was 240 volts or less. So they have effectively

1 decreased that arc flash risk. And, of course, they're depending on the
2 viability and the condition of the electric equipment that they're entering.

3 Q Okay. Now, when you look down, it says, "Necessary PPE
4 and other protective equipment to safely perform assigned tasks." It
5 says, "FR shirt." What does FR stand for?

6 A Fire resistant. Fire rated shirt, actually.

7 Q Okay. "Safety glasses"?

8 A Yes, sir.

9 Q "Steel toe boots, rubber insulated gloves"?

10 A Yes, sir.

11 Q Okay. Did you see the photograph taken of Mr. Myers, the
12 turns on his face?

13 A I believe I did.

14 Q Okay. And did you see that the burns were completely on his
15 face and that he was not wearing safety glasses?

16 A Well, I can't speak to that. Here's the problem with 35,000 --
17 an arc flash that's 35,000, it tends to move things around.

18 Q So --

19 A It tends to affect -- the idea here is that if you're working in an
20 electrical panel that's rated 240 volts or less, you're also working under
21 the assumption that the overcurrent device, the circuit breaker, that's
22 feeding the panel has been properly maintained. Meaning that it will trip
23 instantaneously. In this particular instance, I'm not the right person to
24 make statements about what's going to happen with the consequences
25 of a 35,000 degree Fahrenheit ball that's in front of these guys. So I'm

1 not equipped to tell you what the potential consequences of that
2 are --

3 Q Okay.

4 A -- other than the fact that it can be devastating and deadly.

5 Q Right. But weren't they there to make that panel safe?
6 Wasn't that the whole reason they were there?

7 A No. They were there to change out a circuit breaker within
8 that panel.

9 Q Here we have a signature that's under, "Do you agree that
10 the above work can be done safely?" Do you know who that signature
11 is?

12 A Well, it looks like Andrew James. But I -- you know, I seem to
13 recall his signature.

14 Q Okay. And so under that, Andrew James signed it saying he
15 agrees that the above work can be done safely, right?

16 A Yes, sir.

17 Q Using all -- well, never mind. And then going down even
18 further, it says, "Authorizing and Managing Director," is it -- that would
19 be Darrin Cook's signature? Do you know that?

20 A I do not know that.

21 Q Okay. But underneath that, there's also the same signature
22 as above, which I believe you identified as the signature of Andrew
23 James?

24 A It looks like Andrew James, yes.

25 Q Okay. Well, when he gets on the stand, we'll -- we can

1 always -- always him verify it as well.

2 MR. A. GIOVANNIELLO: All right. Your Honor, it's 12:00. I'm
3 not done. Are we going to --

4 THE COURT: How much longer do you have? I'd like to
5 finish the examination of the witness, if possible, before we take our
6 break.

7 MR. A. GIOVANNIELLO: I'm not sure I could do that.

8 THE COURT: All right. Ladies and Gentlemen, then, we're
9 going to take our luncheon recess at this time.

10 Remember during this recess, you are admonished you must
11 not discuss or communicate with anyone, including fellow jurors, in any
12 way regarding this case or its merits either by voice, phone, email, text,
13 Internet, or other means of communication or social media; you may not
14 read, watch, or listen to any news reports or media accounts or
15 commentary upon the case, do not do any research, consult dictionaries,
16 use the Internet, or reference materials; make any investigation, test any
17 theory in the case, recreate any aspect of the case, or in any other way
18 investigate the case, learn about the case on your own; do not form or
19 express any opinion regarding the case until it's finally submitted to you.

20 We'll say 1:15, Ladies and Gentlemen, for our luncheon
21 break. Follow the marshal, please. Have a good lunch.

22 THE MARSHAL: Please rise.

23 Leave your notepads and your headphones on your seats.

24 [Jury out at 12:03 p.m.]

25 [Outside the presence of the jury]

1 THE COURT: The record should reflect outside the presence
2 the jury. Also, acknowledge the witness remains in the witness stand.

3 Any additional record need to be made by either side as a
4 function of examination or openings this morning? Plaintiff?

5 MR. KUDLER: Nothing at this time.

6 THE COURT: Defendant?

7 MR. A. GIOVANNIELLO: Nothing, Your Honor.

8 THE COURT: See you at 1:15 or a little before.

9 MR. A. GIOVANNIELLO: 1:15. Okay. Thank you,
10 Your Honor.

11 [Recess taken from 12:03 p.m. to 1:11 p.m.]

12 [Outside the presence of the jury]

13 THE COURT: Take a count.

14 THE MARSHAL: Yes, sir.

15 THE COURT: We can put the witness back on the stand.

16 MR. KUDLER: If we may before the jury comes in --

17 THE COURT: Oh, we need to go outside the presence?

18 MR. KUDLER: One quick thing. A very quick thing.

19 THE COURT: Oh, all right. We're on the record in A-735550;
20 Myers versus THI of Nevada. The record should reflect the presence of
21 the Plaintiff and Defense. Outside the presence of the jury. The witness
22 is present in the room.

23 Counsel, Mr. Kudler?

24 MR. KUDLER: Yes. I understand Mr. Giovanniello's
25 condition. Unfortunately he's had surgery. But we had brought it to the

1 jury's attention twice. I don't think we need to have the jury told that
2 he's having this condition and asking for their forgiveness.

3 THE COURT: And agreed to an extent.

4 Mr. Giovanniello, I'm going to give you leave to -- if you need
5 to sit, sit; if you need to stand, within reason and respect, do what you
6 need to do to be comfortable to try your case. Okay?

7 MR. A. GIOVANNIELLO: Thank you.

8 MR. KUDLER: Yeah. It's just the commentary of, you know,
9 "I can't walk."

10 MR. A. GIOVANNIELLO: I'll stop.

11 MR. KUDLER: Thank you.

12 THE COURT: That's fine. Yeah. Noted.

13 MR. A. GIOVANNIELLO: I just -- I just thought they'd be
14 wondering what I'm doing. That's the only reason.

15 THE COURT: You told them.

16 MR. A. GIOVANNIELLO: Yeah, I told them. I'm done.

17 THE COURT: Good. All right.

18 MR. KUDLER: Thank you.

19 THE COURT: You got ten in the room or ten ready?

20 THE MARSHAL: We'll check now, sir.

21 THE COURT: Okay.

22 MR. KUDLER: Would you like the witness in the stand -- in
23 the box?

24 THE COURT: Yes. And we don't need to re-swear him. He
25 remains under oath. And I'll say that in front of your jury.

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[Pause]

THE COURT: There's always one. Always.

MR. KUDLER: One lost sheep.

THE COURT: Please don't be -- don't be that jury. Everybody just be here. Of course, I didn't start off good this morning being a half hour late.

THE CLERK: That wasn't your fault.

THE COURT: But tomorrow, by the way, just for scheduling purposes, we only have two -- I have two matters on calendar that I've worked with the clerk -- law clerk with. So we're going to start promptly at 9:00. There's nothing in front of us. Okay?

MR. KUDLER: Thank you, Your Honor.

THE COURT: And same for Friday. Nothing on calendar. So we're working Friday. So, as I tell you, rack 'em and stack 'em.

THE WITNESS: I feel like I lost a day this week.

MR. A. GIOVANNIELLO: Are you going to go Friday?

MR. KUDLER: Yeah.

MR. A. GIOVANNIELLO: Okay. So I'll put mine on on Monday?

MR. KUDLER: Probably.

MR. A. GIOVANNIELLO: All right.

MR. KUDLER: I don't know. Let me -- I'll have to see how far we get.

MR. A. GIOVANNIELLO: Yeah. Let me know.

MR. KUDLER: I don't think I'm going to get through the -- the

1 two other ones I have today.

2 MR. A. GIOVANNIELLO: Yeah. I -- I think you're right.

3 MR. KUDLER: Yeah. I have -- Dr. Zobio is -- I thought we'd
4 be done at 1:30.

5 THE COURT: Oh.

6 MR. KUDLER: So, he's scheduled to be here at 1:30, but I --
7 you know, he'll just have to sit I guess.

8 THE COURT: Okay.

9 THE MARSHAL: Please rise for the jury.

10 THE COURT: Try -- try your case.

11 MR. KUDLER: Yes. I just wanted to let you know.

12 [Jury in at 1:15 p.m.]

13 THE COURT: Please be seated, Ladies and gentlemen.

14 We're on the record in A-735550; Myers versus THI of
15 Nevada at Cheyenne. The record should reflect the presence of --
16 representing the Plaintiff and Defense.

17 All members of the jury panel do appear to be present. Will
18 the parties stipulate to the entire panel? Plaintiff?

19 MR. KUDLER: The Plaintiff does. Thank you, Your Honor.

20 THE COURT: And Defense?

21 MR. A. GIOVANNIELLO: Stipulated.

22 THE COURT: Thank you.

23 The record should further reflect the remaining Plaintiffs'
24 case-in-chief, cross-examination of the witness. I'll remind the witness
25 that he remains under oath.

1 Mr. Giovanniello, you have the witness on cross.

2 MR. A. GIOVANNIELLO: Thank you, Your Honor.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. A. GIOVANNIELLO:

5 Q Okay. We were talking I think before the break about
6 Mr. Myers and whether he was wearing PP -- whether he was wearing a
7 face shield, I believe?

8 A Yes.

9 Q Okay. Now, what I want you to do is take the books behind
10 you, the blue -- the white ones, and you're going to go to Exhibit 3. And
11 I'm not sure if yours is colored, but mine is black and white. But I do
12 have a colored picture. Yours is black and white as well?

13 A [No audible response.]

14 Q All right. Go to 3. Now, go to 3, number 8.

15 A It's in black and white.

16 Q Yeah, it's black and white, but I have a color picture of the
17 same one.

18 MR. A. GIOVANNIELLO: And I want to put this into evidence,
19 Your Honor.

20 THE COURT: All right. So Defense marked as trial Exhibit 3
21 is being offered. Counsel, is there any objection?

22 MR. KUDLER: No objection. And you're talking about the
23 entire exhibit?

24 MR. A. GIOVANNIELLO: No. I'm talking about just this
25 picture.

1 MR. KUDLER: Okay. Okay. So just Bates stamp 8?
2 MR. A. GIOVANNIELLO: Yeah. As of right now --
3 MR. KUDLER: I have no objection.
4 MR. A. GIOVANNIELLO: -- yeah.
5 THE COURT: So is this -- I am looking at what you provided
6 to the Court as noted as trial Exhibits 205, I believe 1 -- Exhibits 1 through
7 719. Is that not --
8 MR. A. GIOVANNIELLO: No, Your Honor.
9 THE COURT: Is that incorrect?
10 MR. A. GIOVANNIELLO: No. Are you looking at the white
11 books?
12 MR. KUDLER: Plaintiffs' exhibits --
13 THE COURT: The white books? Plaintiffs' --
14 MR. A. GIOVANNIELLO: Yeah. I'm looking --
15 MR. KUDLER: Plaintiffs' exhibits, Your Honor.
16 MR. A. GIOVANNIELLO: -- at Plaintiffs' exhibit book.
17 THE COURT: Okay.
18 MR. A. GIOVANNIELLO: And it's the first one. It's Exhibit 1
19 through 25.
20 THE COURT: So Plaintiffs?
21 MR. A. GIOVANNIELLO: Yeah. And then go to 3, and then
22 picture number 8 should be --
23 THE COURT: So Bates --
24 MR. A. GIOVANNIELLO: -- a face --
25 THE COURT: -- stamp 8?

1 MR. A. GIOVANNIELLO: Yeah. Yes.

2 THE COURT: All right. And it's offered, Bates stamp --
3 Plaintiffs' 8 is offered. Any objection?

4 MR. KUDLER: No, Your Honor.

5 THE COURT: And it's received.

6 [Defendants' Exhibit 3-8 admitted into evidence]

7 MR. A. GIOVANNIELLO: Okay.

8 BY MR. A. GIOVANNIELLO:

9 Q Mr. Gifford, have you seen this picture before?

10 A I probably have.

11 Q Okay. And this is a picture of Mr. Myers?

12 A It looks very much like Mr. Myers.

13 Q Okay. And it's a picture depicting his injuries?

14 A Well, to whatever degree it's showing injury, okay.

15 Q Okay. And do you see whether or not -- look around his
16 eyes. Is there any marks like he was wearing a face mask?

17 A With 35,000 degree, he was wearing some protection.

18 Q 35,000 degree, wouldn't it vaporize everybody in the room? I
19 mean that's technically hotter than the sun I think.

20 A It is hotter than the sun. But there's a ball and when we're in
21 the region of the ball, that's where the temperature is.

22 Q So if he was inside --

23 A So --

24 Q I'm sorry.

25 A I was just going to say, if he's wearing no protection

1 whatever, this picture doesn't show -- it doesn't look anything near like
2 the photos I've seen in the past, in my study and education with
3 electricity, third degree burns.

4 Q That's not a third degree burn, right?

5 A I don't see a third degree burn there. But, once again, I'm
6 looking at a photo.

7 Q Yeah.

8 A And I don't know what the timing of the photo is exactly.

9 Q Okay. Do all arcs -- are all arcs 35,000 degrees?

10 A Well, it's a good question. I don't know. I know that from my
11 study of the publications over decades, that they frequently refer to arc
12 flashes as getting into the range of 35,000 degrees. Whereas the
13 surface -- the surface of the sun is probably 7 or 8 or 9,000 degrees.

14 Q Okay. Now, let's talk about I guess the basis of your opinion
15 as was discussed -- the events as were told to you by Mr. James.

16 A Okay.

17 Q Will you -- now, you were not provided -- we talked about
18 this. You were not provided with -- you need to grab the second set of
19 books with the white copy, and it's 27 to 40.

20 A Well, Counselor, I have a look here that goes up to as high as
21 25 in white. And I have another white book here that's strictly Bates
22 stamped.

23 Q Yeah, that's not it.

24 A Oh.

25 Q I think this is it.

1 A Oh. It's on my desk. I apologize.

2 MR. A. GIOVANNIELLO: I'm sorry, Your Honor. May I
3 approach?

4 THE COURT: Binder 3 of 3?

5 MR. A. GIOVANNIELLO: It's 1 -- it's something to 40.

6 THE WITNESS: Your Honor, 3 of 3.

7 BY MR. A. GIOVANNIELLO:

8 Q Okay. This is a form 4-C. Okay. Have you ever -- have you
9 seen this form before?

10 A Will you redirect me to the tab --

11 Q Yeah. I'm sorry.

12 A -- you want me to open up?

13 Q Yeah, you're right, I did not do that.

14 A Okay.

15 Q Thank you for reminding me. It's Exhibit 31 --

16 A Okay.

17 Q -- and it's 31-1464.

18 [Counsel confer]

19 THE WITNESS: I'm looking at 1464 now.

20 BY MR. A. GIOVANNIELLO:

21 Q Okay.

22 MR. A. GIOVANNIELLO: Your Honor, may I publish?

23 THE COURT: It needs to be -- we need to do foundational
24 aspects and admission unless you're --

25 MR. A. GIOVANNIELLO: Sure.

1 THE COURT: -- referring to it in a general sense.

2 BY MR. A. GIOVANNIELLO:

3 Q This is a form 4-C, and it's an employee's claim for
4 compensation. And if you'll look at the form, the first third on the right-
5 hand side, that's a signature that I think you identified earlier as being
6 Mr. James, correct?

7 A On the right-hand side, I don't see Mr. James' signature.

8 MR. A. GIOVANNIELLO: May I approach, Your Honor?

9 THE COURT: Yes.

10 THE WITNESS: I'm with you now. Thank you.

11 MR. A. GIOVANNIELLO: You're welcome.

12 BY MR. A. GIOVANNIELLO:

13 Q Mr. James --

14 A So, yes, I recognize this being the same signature we've
15 identified before. So --

16 Q Okay.

17 A -- I think it's sufficient to say that it's Mr. James' signature.

18 Q Okay. And there's dates on this. If you look to the left of that
19 signature, that date?

20 A I'm seeing a date of 6/6/2014.

21 Q Okay.

22 A Date of injury.

23 Q So we have -- the day of the injury. So we have -- and that's
24 the day that the injury occurred. So we do have a signature of
25 Mr. James. If you look at the bottom of this --

1 MR. A. GIOVANNIELLO: And may I point it out again,
2 Your Honor?

3 THE COURT: Yes.

4 BY MR. A. GIOVANNIELLO:

5 Q This part over here where will it says, "Certified," I want you
6 to look at that date right there.

7 A I do.

8 Q And that date is 6/11?

9 A It's 6/11/14.

10 Q Okay.

11 MR. A. GIOVANNIELLO: Now may I publish?

12 THE COURT: Are you offering 31 dash --

13 MR. A. GIOVANNIELLO: Yes.

14 THE COURT: -- 1464 Plaintiff?

15 MR. A. GIOVANNIELLO: Yes. That's --

16 THE COURT: That's offered. Is there any objection to
17 admission?

18 MR. KUDLER: No, Your Honor.

19 THE COURT: Then it's received.

20 [Plaintiffs' Exhibit 31-1464 admitted into evidence]

21 MR. A. GIOVANNIELLO: I'm not sure how to make this
22 bigger.

23 [Counsel and Clerk confer]

24 BY MR. A. GIOVANNIELLO:

25 Q Do you see the part where it says, "How did this injury or

1 occupational disease occur?"

2 A Why don't you just point on it in ELMO there for the region
3 you're looking at. Right there? Okay.

4 Q Okay. And the response is, "Unknown what happened,
5 electric arc flash"?

6 A Yes.

7 Q Right. So as of the date this is written, signed by Mr.
8 James --

9 A Yes.

10 Q -- it's unknown how that arc flash happened, at least on the
11 date this was done, which it looks like 6/11/16?

12 A Well, I don't agree with the -- that being -- 6/11/14 is indicated
13 the date of which the employer's copy of the form was mailed to the
14 employer. This thing was prepared apparently on June 6, '14 and mailed
15 five days later.

16 Q Still, it says, "Unknown what happened, electrical arc flash."
17 Doesn't it say that?

18 A Yeah, it does.

19 Q Okay. And based upon that, could it be that essentially the
20 story that you received about a screw being -- falling down and causing
21 an arc flash, couldn't that have been concocted sometime later?

22 A Well, based on this document, the way I read this is unknown
23 as to what happened. They hadn't figured it out by there. Or, who
24 knows, he could have been in a state of shock. I mean I've been -- I've
25 been in the presence of electrical shocks, and it sounds like lightning

1 going off. It wouldn't be surprised at all if it wasn't completely clear as
2 to what happened. But he did that have the presence of mind to indicate
3 electrical arc flash.

4 Q Well, yeah, it was definitely electrical arc flash. But he
5 doesn't know how it occurred, right?

6 A Well, when this thing occurred --

7 Q No, not -- okay.

8 A So the --

9 Q I don't want to argue with you. The document speaks for
10 itself.

11 Okay. So let me tell you this. Let's just take this -- you're an
12 expert. I guess I'll give you a hypothetical. I take it that the story you
13 were told is not correct, okay, on how this occurred, okay. And really
14 they don't know how it occurred, okay. It could have occurred any time.
15 It could have been -- Mr. Myers was working on it. He could have done
16 something to cause an arc flash. Is -- could that -- is that within the
17 realm of possibility?

18 A I haven't seen anything to support that. But I suppose there's
19 other possibilities --

20 Q Right.

21 A -- besides what I was told. But what I've been told is
22 consistent with what -- the evidence I've seen.

23 Q Except for this document, which --

24 MR. KUDLER: Your Honor --

25 BY MR. A. GIOVANNIELLO:

1 Q -- contradicts the evidence you've seen, right?

2 MR. KUDLER: -- objection on commentary.

3 THE COURT: Sustained.

4 MR. A. GIOVANNIELLO: Okay.

5 BY MR. A. GIOVANNIELLO:

6 Q Now let's talk about some regulations. You mentioned
7 OSHA?

8 A I did.

9 Q Occupational Safety and -- what's the name again? I think
10 you gave it to me. I keep forgetting it.

11 MR. C. GIOVANNIELLO: Health. Occupational Safety and
12 Health.

13 BY MR. A. GIOVANNIELLO:

14 Q Occupational Safety and Health Act or administration.

15 A I'm familiar with it.

16 Q All right. You know what, before we get there --

17 MR. A. GIOVANNIELLO: And, Your Honor, this is a document
18 I'm going to put into evidence, but I've got to redact it.

19 THE COURT: Well, let's look through it and see where it
20 takes us. Go ahead.

21 MR. A. GIOVANNIELLO: Okay.

22 THE COURT: You have the witness.

23 BY MR. A. GIOVANNIELLO:

24 Q Before we go there, okay, one other thing. You were -- were
25 you -- do you -- do you know what an interrogatory is?

1 A Yes, I do.

2 Q Okay. That's a question that is asked from one side to the
3 other, and they answer it under oath, right?

4 A Yes. That's --

5 Q Okay.

6 A -- my understanding as well.

7 Q Okay.

8 A I've read many of them in my life.

9 Q Were you -- I bet you have. Were you given interrogatories
10 that were responded to by Mr. James?

11 A I don't recall seeing the interrogatories in this matter.

12 Q Okay. So if -- and I'm going to read you something and I'm
13 going to ask you whether it changes your opinion. If Mr. James was to
14 say, "Jeff was in the corner of the room, his face blackened by the
15 explosion, and we did not have any idea at the time what exactly had
16 happened," now, take this in conjunction with the document I showed
17 you, the C-4 document, okay, does that change -- will that change your
18 opinions at all?

19 A No.

20 Q Okay. You talked about OSHA, correct?

21 A Yes, I did.

22 Q And OSHA is what?

23 A It's the Occupational Safety and Health Act.

24 Q Okay.

25 A A governmental program for the purpose of providing

1 protection of people in the workplace.

2 Q And as -- I would say the electrical guru, which I believe you
3 are -- as the electrical guru and as a fact that you have mentioned OSHA
4 in your report and in your testimony, you talked about one specific part
5 of OSHA. But are you familiar now with OSHA Section 1910.33(a)?

6 A Yes.

7 Q You are?

8 A Oh, yeah.

9 Q That -- you know what, I can make it easy for you. Look in
10 the black book, and it's Exhibit 236. It's in the big, fat one. It is this one.

11 A Oh.

12 Q Here, it's this one.

13 A I think it is 2 --

14 MR. A. GIOVANNIELLO: Your Honor, the black book, 236. I
15 think you took the middle one.

16 THE WITNESS: I'm in tab number 236, sir.

17 BY MR. A. GIOVANNIELLO:

18 Q And you see that that's OSHA regulation 1910.33(a)?

19 A Yes, I can.

20 Q Now, do electricians have to abide by these regulations?

21 A I'm going to look at something here and give us a little
22 context for 1910. 1910 refers to the employer and the employee.

23 Q Right. Who's the employer? Is it Electric Light and Power
24 [sic]?

25 A In this particular instance, yeah, sure, we could have an

1 employer/employee relationship between them. But really this pertains
2 to an employee and employer relationship. Whereas the 1926 part of
3 OSHA that I've referred to early -- earlier is an overarching prescript. It --

4 Q Sure.

5 A -- applies to College Park, it applies to the contractor.

6 Q But this is talking about working deenergized and energized
7 parts, correct? It applies to that? So in this case, they were working on
8 an energized part. Wouldn't you say it applies to that?

9 A Under 1910.333(a)(1), they talk about deenergized parts, and I
10 will just read a part of this because the document speaks for itself. "Live
11 parts" --

12 Q Right. But I'd like you to read the whole thing.

13 A I don't need to read the whole thing, but I can read the first
14 line or so.

15 Q No. I want you to read every single -- every single one.
16 Now, if you're going to talk 1933(a), I just wanted you to read the whole
17 section.

18 A Okay. Is this a question then?

19 Q Yes. Can you read that, please?

20 A Absolutely. I started to. I don't understand what you would
21 like me to do. I'd be happy to do whatever. Do you want me to start
22 reading from deenergized parts past the --

23 Q No, no --

24 A -- quotation?

25 Q -- no. I want you -- you're reading 1910.333 small a.

1 A Okay.

2 Q Just that section.

3 A Of course. "General."

4 Q Yes.

5 A "Safety-related work practices shall be employed to prevent
6 electric shock or other injuries resulting from either direct or indirect
7 electrical contacts when work is performed near or on equipment or
8 circuits which are or may be energized. The specific safety-related work
9 practices shall be consistent with the nature and extent of the associated
10 electrical hazards."

11 Q Great. Now, can you read 1910.333(a)(2)? And that's talking
12 about energized parts.

13 A "Energized parts" -- period. "If the exposure life parts are not
14 deenergized" -- parenthetically it says, for example, "for reasons of
15 increased or additional hazards or infeasibility, other safety-related work
16 practices shall be used to protect employees who may be exposed to the
17 electrical hazards involved. Such work practices shall protect employees
18 against contact with energized circuit parts directly with any part of their
19 body or indirectly through some other conductive object. The work
20 practices that are used shall be suitable for the conditions under which
21 the work is to be performed and for the voltage level of exposed electric
22 conductors or circuit parts. Specific work practice requirements are
23 detailed in paragraph (c) of this section."

24 Q Right. Okay. Now what I'd like you to do is go to 236-5.

25 A I'm there.

1 Q And read -- it's 1910.333(c)(2).

2 A "Working on or near exposed energized parts."

3 Q Are we on the right page?

4 A I'm on --

5 Q 236 --

6 A -- 236-5.

7 Q 1910.333(c)(2)?

8 A Oh, (c)(2).

9 "Work on energized equipment" -- period. "Only qualified persons
10 may work on electric circuit parts or equipment that have not been
11 deenergized under the procedures of paragraph (b) of this section. The
12 proper" -- "such persons shall be capable of working safely on energized
13 circuits and shall be familiar with the proper use of special precautionary
14 techniques, personal protection equipment, insulting and shielding
15 materials, and insulated tools."

16 Q Okay. Now the three sections you read; wouldn't you say
17 that they apply in this situation?

18 A Well, certainly all of this has application. Sure.

19 Q Okay. Thank you.

20 A What we've covered is the fact that there's application here
21 for you shall not work on energized parts, but there are exceptions to
22 that. Meaning, if you're going to work on energized parts, there's certain
23 protocols that have to be followed.

24 Q And you need to follow those protocols, right?

25 A Of course.

1 Q Okay. And if you don't follow those protocols, that's not
2 good, right?

3 A It can -- it could be unfortunate if you don't follow those
4 protocols.

5 Q Okay. Thank you, sir.

6 MR. A. GIOVANNIELLO: That's all the questions I have for
7 you.

8 THE COURT: Redirect?

9 MR. KUDLER: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. KUDLER:

12 Q Was this a situation where they were shocked because they
13 touched inappropriate parts?

14 A I didn't -- I haven't seen anything in testimony or any other
15 way that they reported that they were electrically shocked.

16 Q Okay. They were not injured by direct contact with energized
17 parts, correct, or were they injured --

18 A I -- no. Based on what I've seen, they were injured By virtue
19 of an arc flash, which is the area of air that's near energized parts. But I
20 haven't seen anything where they actually were in contact with those
21 electrical parts in such a way that it shocked either of the gentlemen.

22 Q You had mentioned that the subsequent incident was
23 propagated by a screw being screwed in through insulation and causing
24 a short. Would that have happened in 2014, and stayed idle and
25 dormant until Helix was there several years later?

1 A Well, it's possible. But more likely than not, the incident
2 occurred with that screw at the time that Helix was doing their work.

3 Q Okay. And that's because it wouldn't be likely that it stayed
4 in there for a year or more without shorting anything out?

5 A It's been my experience when a screw goes into a cable
6 that's behind the dead front of panel, when that screw goes in, there's an
7 electrical event immediately. And if Mr. Myers and Mr. James, either of
8 them had run that screw into the cable, more likely than not, it would
9 have occurred at the time that they did that, as opposed to then it's
10 sitting idle for some -- for four years, at which time Helix came in and
11 they could have turned the screw, taken it out and put it back in or they
12 could have been turning it in some way and created the arc flash at that
13 point.

14 Q So, your opinion, more likely Helix did that?

15 A That's my opinion.

16 Q Okay. We've heard this phrase several times, that somebody
17 was to watch all clearances around the energized bus. What is the
18 energized bus?

19 A This particular panel MSA has a neutral bus up at the top of
20 the electrical panel. That's not considered an energized bus. It's --
21 actually, it's a grounded bus. Then in the bottom of the panel, and
22 sometimes in other locations, there's a grounding bus. Once again, not
23 considered an energized bus. The energized bus would be the part that
24 you would see in your phase when you take the panel covers off and
25 you're looking at the circuit breakers and the fingers or bars that come

1 from the bus to the circuit breakers. So the busbars are those long, flat,
2 copper material that's running vertical down through the middle of the
3 panel.

4 Q Okay. And why is it that you watch all clearances around
5 those energized buses?

6 A This -- what happened in this particular incident is a perfect
7 example of that. You watch for those clearances because you want to
8 make certain that two thing don't happen. You don't want your
9 screwdriver or even your hand, for that matter, but you don't want tools,
10 screwdrivers, or metal parts to come between two pieces of busbar, or
11 you do not want that screwdriver or something else to come between
12 one of the busbars and something that's grounded within the panel.
13 Either of those events would create an arc fault.

14 Q And these screws were not located at the energized busbars,
15 correct?

16 A These screws were up directly underneath the neutral
17 busbar, which was not energized.

18 Q Okay. Looking back at Exhibit 238, and if you could get that
19 out --

20 A I'm there.

21 Q -- and why don't we look at page -- and you're looking at 238-
22 6?

23 A Now I am.

24 Q Okay. The -- and I know -- excuse me. I just remembered
25 this. The document that you were shown that Mr. James signed on 6/6 --

1 A Yes, sir.

2 Q -- do you recall where that was signed?

3 A Well, on the page or where he was standing when he signed
4 it?

5 Q Where he was standing when he signed it.

6 A I do not recall.

7 Q Okay. And if you would go to -- back to page 1464 in the
8 white book. Sorry about that.

9 A That's okay. I'm looking at 1464.

10 Q Okay. And -- and in the middle there above the -- the bar up
11 on the screen --

12 MR. A. GIOVANNIELLO: Counsel, give me a second to get
13 there, please.

14 MR. KUDLER: Sure. And you could look on the screen.

15 MR. A. GIOVANNIELLO: I'm there, counsel.

16 MR. KUDLER: Thank you.

17 BY MR. KUDLER:

18 Q You can go ahead and -- oh, the screen in front of you should
19 have it as well.

20 A Yeah, I've got it.

21 Q Okay. So looking right here, it says, "Place"?

22 A Yes, sir.

23 Q And where was it signed?

24 A It was signed at UMC --

25 Q Okay.

1 A -- which, in my mind, that's University Medical Center.

2 Q Okay. So at the ER?

3 A Yes.

4 Q Okay. And so -- you mentioned they may not have looked at
5 everything at that point. There was other things go on; people being
6 burned, ambulance, getting to the hospital. Now, going back to 238-6 in
7 the black book --

8 A Yes.

9 Q Now, I want to go back to 238-4.

10 A Okay.

11 Q Okay? There's an answer that starts there, and it goes
12 through 238-5, all of 238-5.

13 A Yes.

14 Q And it goes through all of 238-6.

15 A Agreed.

16 Q And it ends at the bottom of 238-6. So it's two plus pages
17 long, that answer.

18 A Okay.

19 Q And what you were read starts on line 3 of 238-6 and says,
20 "At this time Jeff's face was black. I had a large flap of skin on my left
21 elbow. Jeff was in the corner of the room, his face was blackened by the
22 explosion, and we did not have any idea at that time what exactly had
23 happened."

24 And that's the portion that Defense counsel read to you?

25 A They read a portion of that.

1 Q Correct. Did they read the rest of that answer?

2 A No.

3 Q Okay.

4 A No.

5 Q Does that answer explain how it is that they discovered that
6 the screw fell?

7 A Well, in reading through this, a couple of things -- the fire
8 department people actually found a couple --

9 MR. A. GIOVANNIELLO: Objection, Your Honor. Hearsay.

10 THE COURT: Sustained.

11 MR. KUDLER: Okay.

12 BY MR. KUDLER:

13 Q It talks about an investigation after the fact?

14 A Yeah.

15 MR. A. GIOVANNIELLO: Objection. Hearsay.

16 THE COURT: No, it's not hearsay. Overruled. I mean the
17 fact that the fire department appeared -- evidently was on premises is
18 not hearsay. I don't know where you're headed next, but that part --

19 MR. KUDLER: Just as to --

20 THE COURT: -- is not hearsay.

21 MR. KUDLER: -- as to how they discovered --

22 THE COURT: Well, let's --

23 MR. KUDLER: -- that a screw --

24 THE COURT: -- see where we go.

25 MR. A. GIOVANNIELLO: And I'm going to object on it. That's

1 hearsay.

2 THE COURT: I haven't got a question yet.

3 MR. A. GIOVANNIELLO: Okay. I didn't have my glasses on. I
4 thought you were looking at me.

5 THE COURT: No. I'm not looking at anybody. I'm staring at
6 the ceiling.

7 MR. A. GIOVANNIELLO: I'm going to put my glasses on.

8 BY MR. KUDLER:

9 Q So at some time after, did they discover what had happened
10 after they -- he was at UMC?

11 MR. A. GIOVANNIELLO: And objection. Beyond the scope of
12 this witness' expertise.

13 MR. KUDLER: It is opened -- the door was opened.

14 THE COURT: Cross-examination. Overruled. Let's see
15 where we go.

16 BY MR. KUDLER:

17 Q In your understanding, at some point after they discovered
18 what happened, after they -- the form was filled out at UMC the night of
19 the incident?

20 A I apologize. When you say, "they," are you talking about the
21 fire department or --

22 Q Mr. --

23 A -- Mr. --

24 Q -- James?

25 A -- Myers and Mr. James?

1 Q Mr. James, yes.

2 A They discovered afterwards what it was.

3 Q Okay. Was -- regardless of whether it's applicable or not
4 because of the employer issue with OSHA regulation, did they violate
5 1910.333?

6 A No. In my opinion, they were compliant with OSHA 1910.

7 Q Okay. They had -- did they have a valid reason to go in with
8 it energized?

9 A They did.

10 Q Okay. Were they wearing PPE?

11 A Yes, they were.

12 Q And were they qualified to be in this box while it was
13 energized?

14 A Yes.

15 MR. KUDLER: That's all I have. Thank you.

16 THE COURT: Recross?

17 MR. A. GIOVANNIELLO: No recross, Your Honor.

18 THE COURT: So nothing else for this witness.

19 Is this witness free to go?

20 MR. KUDLER: Yes, Your Honor.

21 THE COURT: I see two hands -- three hands going up.

22 Parties approach. Lawyers, I need you up here so you can examine the
23 questions with me.

24 Don't be shy. Use the whole piece of paper. It makes it
25 easier on me. Quite big. I'm old. Thank you.

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[Sidebar begins at 1:51 p.m.]

THE COURT: I don't think it's this witness' ability to offer that. That's appropriate, in my opinion. Go ahead and give that a read. [Indiscernible] just about someone [indiscernible] in a second.

MR. A. GIOVANNIELLO: Yeah, I opened the door.

THE COURT: I don't know, counsel, that's a tough one.

MR. KUDLER: That's --

THE COURT: [Indiscernible] a breaker.

MR. KUDLER: -- [indiscernible]

MR. A. GIOVANNIELLO: Now I can [indiscernible].

THE COURT: No.

MR. KUDLER: It's outside of his expertise.

THE COURT: All these seem to be probably focused on an expert. Provide more details of OSHA violations. Eyewitness determined the [Indiscernible]. That kind of -- woops. I don't if you can -- I don't know if they meant that one. You can ask him if he knows, Mr. Myers.

So let's do them one at a time. Any objection to this question?

MR. A. GIOVANNIELLO: I object to that question.

THE COURT: What's that?

MR. A. GIOVANNIELLO: I think I object to that.

THE COURT: So --

MR. A. GIOVANNIELLO: I don't see how he would know that. I think Mr. Myers --

1 THE COURT: That's not a question for this witness.
2 MR. A. GIOVANNIELLO: Yeah. I think --
3 MR. KUDLER: Yeah. That's --
4 MR. A. GIOVANNIELLO: -- Mr. Myers [indiscernible].
5 THE COURT: That one -- that one's out. The
6 screws [indiscernible]. He wasn't there.
7 MR. A. GIOVANNIELLO: No, he wasn't there.
8 THE COURT: So that one's out. Provide more details. It kind
9 of seems like this is where he was. And so I'm okay. Objections?
10 MR. KUDLER: I'm fine with that.
11 MR. A. GIOVANNIELLO: I'm fine with that.
12 THE COURT: Okay. Good.
13 MR. A. GIOVANNIELLO: I'm fine with that one.
14 THE COURT: You're good with this one too? I don't
15 remember which one it is. But if you're not objecting, I'll do it.
16 MR. KUDLER: Yeah, you can [indiscernible].
17 THE COURT: Okay. What was the instantaneous setting on
18 the breaker? How about these?
19 MR. A. GIOVANNIELLO: There's something on the back of
20 that too.
21 THE COURT: Yeah. Read the front. Read the back. What
22 was the -- I mean we can ask him. He may not know.
23 MR. KUDLER: Yeah. That's fine.
24 THE COURT: Okay.
25 MR. A. GIOVANNIELLO: Uh-huh.

1 THE COURT: Okay. How can you tell if [indiscernible]? Well,
2 you showed him the photos, so you kind of let him do this.

3 MR. A. GIOVANNIELLO: Yeah. I'm okay with it.

4 THE COURT: All right?

5 MR. KUDLER: All right.

6 [Sidebar ends at 1:54 p.m.]

7 THE COURT: All right. Let's go back on the record.
8 Provide more details of OSHA violations. If you can.

9 THE WITNESS: Let me approach that in two different ways
10 then. First, Mr. Myers and Mr. James and their employer were obligated
11 to comply with the OSHA rules. They were going to be working on a
12 panel that normally an electrical contractor would send his employees in
13 and say, "Look, turn the power off if you're going to work on the panel."
14 There are special circumstances. In this case, a health facility. It wasn't
15 really reasonable to turn the power off to the panel.

16 So they had to work on it hot. In order to do so, then they
17 had to suit up, wear the proper gear, they had to take certain steps and
18 procedures, and they had to be qualified. Qualified is defined pretty well
19 in the National Electrical Code and elsewhere. Individuals who are
20 actual electricians as opposed to just saying they are -- that they are.
21 These gentlemen are so qualified to do so.

22 On the other hand, the OSHA -- the OSHA violations by
23 College Park was the fact that the requirement under 1926 is that the
24 employer, in this particular case, College Park, had an obligation to
25 provide a safe working environment. They had an old electrical panel

1 that had been -- had been opened and something had been done inside
2 of it and people had left materials inside of it that they shouldn't have
3 left. And as time went on, because under the -- under the rules of the
4 National Electrical Safety Code and under the National Electrical Code,
5 the owner of the facility has to maintain and inspect their equipment.
6 Those things were not done. And that comprises an OSHA violation.

7 THE COURT: How does the witness determine the length of
8 time the circuit breaker was delayed?

9 THE WITNESS: That's a good question. Because of the
10 description of this arc flash and what happened, let me see if I can get
11 technical but make it simple at the same time. Not that you're -- can't
12 deal with technical issues.

13 A circuit breaker can and should trip in about 25
14 milliseconds. Let me break that down in different ways. You probably
15 heard that with electricity in alternating current, it kind of wave -- it goes
16 along in a wave called the sign wave. And every 60 seconds the sign
17 wave goes from the top to the bottom through center point 60 times in
18 one second. If the circuit breaker were to trip in one cycle, that would be
19 about .017 of a second. That would be extremely fast. The circuit
20 breaker probably should have tripped maybe ten times faster than that.

21 So when the arc flash -- when the -- when the event that --
22 let's say that this is the bus location between -- this is an insulator, and
23 this is phase B and phase C. So when the screw gets on those, 20 -- 25
24 milliseconds is so fast that immediately the circuit breaker would trip.
25 And that prevents the arc flash from going into a big ball. In this

1 particular instance, it took many cycles for it to develop into a big ball.
2 And, quite frankly, the other part is I've not seen any evidence that the
3 circuit breaker ever did trip. But with an arc flash of that nature tells me
4 that the circuit breaker was not maintained and was not functioning
5 properly.

6 THE COURT: Would it be common practice for electricians to
7 check for any loose screws or parts before opening up any panels for
8 maintenance and/or repair?

9 THE WITNESS: A very good question again. In approaching
10 a panel, before you open it up, certainly you would look for things
11 around the panel. You look for other people who are in the room. You
12 would look for equipment; pipes, ladders, or things that could possibly
13 tip over. Or another thing too, somebody could leave a -- leave a piece
14 of pipe on the floor that you could trip on.

15 Once you've done that, then you open up the covers from the
16 electrical panel and now you observe all of the live parts, and you
17 consider what you're going to do. Would it be wise to stop and look at
18 every area within the electrical panel? You could do that. In this
19 particular instance, these things were -- this thing was up above their
20 heads. They weren't visible from where they were. In my opinion, they
21 did a reasonable job of determining whether or not it was safe to work in
22 the panel.

23 There's another two reasons why I think it was reasonable.
24 They were relying upon a health -- a company that happened to be a
25 health organization who would normally be required to comply with

1 inspection and maintenance and had given access to these gentlemen by
2 someone -- Mr. Comstock gave them permission to go in and do the
3 work, which is equivalent to saying, "It's safe to work in this area."

4 Based upon all of those things, I think they took reasonable
5 steps to determine whether or not they would be safe. Keeping in mind
6 too, they put on the protective gear, and they worked as a team.

7 THE COURT: How can you tell if Mr. Myers was wearing PPE
8 from photos shown?

9 THE WITNESS: Considering the fact that the circuit maker --
10 breaker never tripped, the arc flash could have been very large. And if it
11 was in the region of these guys at 35,000 degrees, it would have been
12 horrific. I don't see how either one of them could have lived.

13 THE COURT: What was the instantaneous setting of the
14 breaker -- question mark. How was the breaker trip time known or
15 estimated -- open parens -- several seconds was testified -- closed
16 paren -- with no arc flash study, how would the proper instantaneous
17 setting be known?

18 THE WITNESS: That's an excellent question. We don't
19 know. I haven't seen the arc study on that particular breaker. I'm just
20 telling you that it never tripped. Therefore, no matter what the study
21 showed or the what curve for the electrical current, with respect to time
22 and voltage with respect to time, would be -- it would not be of value to
23 me in determining, why didn't the breaker trip. It didn't trip because it
24 was faulty. There was enough -- there was enough electrical energy that
25 there's no question it should have tripped.

1 THE COURT: Any follow-up questions from the jury as
2 consequence of questions asked and answered from the jury? I'm
3 seeing no hands.

4 Follow-up jury questions, Plaintiff?

5 MR. KUDLER: No, thank you, Your Honor.

6 THE COURT: Follow-up, Defendant?

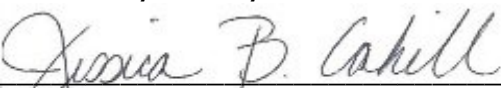
7 MR. A. GIOVANNIELLO: No thank you, Your Honor.

8 THE COURT: Please step down.

9 THE WITNESS: Thank you, Your Honor.

10 [Designation of the record ends at 2:02 p.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

22 

23 Maukele Transcribers, LLC

24 Jessica B. Cahill, Transcriber, CER/CET-708

25